

EXHIBIT 1

PUBLIC REDACTED VERSION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,

Plaintiffs,

vs.

Case No. 3:20-cv-04688-RS

GOOGLE LLC,

Defendant.

ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF MICHAEL J. LASINSKI

San Francisco, California

Thursday, June 29, 2023

Volume 1

STENOGRAPHICALLY REPORTED BY:

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NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,

Plaintiffs,

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Case No. 3:20-cv-04688-RS

GOOGLE LLC,

Defendant.

DEPOSITION OF MICHAEL J. LASINSKI, taken
on behalf of the Defendant, at Willkie Farr &
Gallagher, LLP, One Front Street, 34th Floor,
San Francisco, California, commencing at
10:19 a.m., Thursday, June 29, 2023 before
REBECCA L. ROMANO, a Certified Shorthand Reporter,
Certified Court Reporter, Registered Professional
Reporter.

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I N D E X

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1 San Francisco, California; Thursday, June 29, 2023

2 10:19 a.m.

3 ---o0o---

4

5 THE VIDEOGRAPHER: We are going on the 10:20:29
6 record at 10:19 a.m. on June 29th, 2023.

7 Please note that the microphones are
8 sensitive and may pick up whispering and private
9 conversations. Please mute your phones at this
10 time. Audio and video recording will continue to 10:20:44
11 take place unless all parties agree to go off the
12 record.

13 This is Media Unit 1 of the
14 video-recorded deposition of Michael Lasinski in
15 the matter of Anibal Rodriguez, et al., versus 10:21:03
16 Google LLC, filed in the United States
17 District Court, Northern District of California.
18 Case No. 3:20-cv-04688-RS.

19 The location of the deposition is One
20 Front Street, 34th Floor, San Francisco, California 10:21:25
21 94111.

22 My name is Shawna Hynes, representing
23 Veritext Legal Solutions, and I'm the videographer.

24 The court reporter is Rebecca Romano from
25 the firm Veritext Legal Solutions. 10:21:41

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1 I am not related to any party in this 10:21:45
2 action nor am I financially interested in the
3 outcome.

4 If there are any objections to
5 proceeding, please state them at the time of your 10:21:54
6 appearance.

7 Counsel present will now state their
8 appearances and affiliations for the record
9 beginning with the noticing attorney. For those
10 appearing remotely, the court reporter has noted 10:22:06
11 your appearances for the record.

12 MR. SANTACANA: Eduardo Santacana,
13 Willkie Farr & Gallagher, for Google.

14 MR. LEE: James Lee, Boies Schiller
15 Flexner, for the plaintiffs. 10:22:19

16 And I have with me a summer intern, who I
17 will allow him to introduce himself.

18 MR. KUATE-FODOUOP: Kevin Kuate-Fodouop
19 with Susman Godfrey.

20 THE VIDEOGRAPHER: Can you state that one 10:22:28
21 more time loud.

22 MR. KUATE-FODOUOP: Kevin Kuate-Fodouop
23 with Susman Godfrey.

24 THE VIDEOGRAPHER: Thank you.

25 Will the court reporter please swear in 10:22:36

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1 the witness, and then counsel may proceed. 10:22:37

2 THE COURT REPORTER: If you could raise
3 your right hand for me, please.

4 THE DEPONENT: (Complies.)

5 THE COURT REPORTER: You do solemnly 10:22:39

6 state, under penalty of perjury, that the testimony
7 you are about to give in this deposition shall be
8 the truth, the whole truth and nothing but the
9 truth?

10 THE DEPONENT: I do. 10:22:40

11

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15 10:22:40

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20 10:22:40

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24

25 ///// 10:22:51

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1 MICHAEL J. LASINSKI, 10:22:51
2 having been administered an oath, was examined and
3 testified as follows:
4

5 EXAMINATION 10:22:51
6 BY MR. SANTACANA:

7 Q. Good morning, Mr. Lasinski. It's nice to
8 meet you. I will be asking you some questions
9 today.

10 Have you testified before? 10:23:00

11 A. I have, yes.

12 Q. How many depositions have you sat for?

13 A. I would estimate approximately 40.

14 Q. Okay. So you know the ropes.

15 MR. LEE: Objection. Form. 10:23:11

16 THE DEPONENT: I've -- I have been
17 deposed many times.

18 Q. (By Mr. Santacana) Okay. Any reason you
19 can't testify truthfully today?

20 A. No. 10:23:18

21 Q. How many expert engagements do you think
22 you've had over the course of your career?

23 A. Probably 150, 200.

24 Q. Who is representing you today in this
25 deposition? 10:23:43

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1 A. Mr. Lee. 10:23:44

2 Q. Have you retained Mr. Lee as your lawyer?

3 A. I have not retained him as my lawyer, no.

4 Q. Okay. And have you paid him to represent

5 you today? 10:23:55

6 A. I am not paying him to represent me.

7 Q. Do you have any other lawyers in this

8 case?

9 A. Well, there are other lawyers in this

10 case, yes. There are lawyers from Susman Godfrey, 10:24:05

11 and there are lawyers from Morgan & Morgan.

12 Q. You haven't retained any of them?

13 A. I have not.

14 Q. Okay. And did you retain any lawyers to

15 respond to the subpoena that you were issued? 10:24:16

16 A. I did not, no.

17 Q. Who handled the response to the subpoena?

18 A. The lawyers in this matter did.

19 Q. Did you review the subpoena?

20 A. I did. 10:24:27

21 Q. How many hours have you spent on this

22 engagement?

23 A. I would have to estimate.

24 Q. Sure.

25 A. 160, 200, somewhere in there. 10:24:41

1 Q. Anyone else work with you on this expert 10:24:47
2 engagement?
3 A. Yes.
4 Q. Who?
5 A. Chris Schulte from my firm. Also Rujuta. 10:24:53
6 I cannot remember her last name, also from my firm.
7 And then Meryn Campbell from my firm.
8 Q. Did your hours estimate just now include
9 their time?
10 A. No. 10:25:14
11 Q. Roughly how much time do you think they
12 together have spent on this?
13 A. I mean, roughly, altogether, I would
14 imagine it's over a thousand hours, but maybe
15 closer to 1,500 hours. 10:25:26
16 Q. What's your role at Ankura Consulting?
17 A. I have two roles -- three roles.
18 I lead the intellectual group at Ankura
19 Consulting. I have clients, like what I do here
20 today. And then I also mentor staff people at 10:25:50
21 Ankura.
22 Q. Do you own a share of Ankura's profits?
23 A. I have shares in the firm.
24 Q. So higher profits, you get paid more?
25 A. No, that's not how it works. 10:26:14

1 Q. Okay. Apart from compensation related to 10:26:16
2 your hourly rate, do you get any compensation from
3 Ankura based on the performance of the consulting
4 firm?

5 A. To -- actually, for me, it's a black box. 10:26:33
6 So my -- my boss sets my bonus. So I don't know
7 how that -- how that works.

8 Q. Okay. But you get paid a bonus at the
9 end of the year, I guess?

10 A. I -- it's possible that I would get paid 10:26:47
11 a bonus.

12 Q. How many times have you been retained as
13 an expert by the lawyers in this case?

14 A. Twice.

15 Q. What was the other time? 10:26:59

16 A. For the Brown case.

17 Q. You have no other current engagements
18 with them?

19 A. No, I do not.

20 Q. And you are including -- go ahead. 10:27:10

21 A. Just to be -- there are different law
22 firms here. I had been retained previously before
23 that by Susman Godfrey in other cases.

24 Q. How many times, approximately?

25 A. Approximately three other times. 10:27:25

1 Q. Okay. Were any of those cases consumer 10:27:27
2 class actions?
3 A. Yes.
4 Q. Which ones?
5 A. There was one for Susman & Godfrey 10:27:41
6 against Qualcomm.
7 Q. Okay. And then you haven't been
8 otherwise retained for anything else by the
9 Boies Schiller firm?
10 A. No. 10:27:56
11 Q. Or the Morgan & Morgan firm?
12 A. Not that I can remember, no.
13 Q. Okay. Can you describe for me or
14 summarize your assignment in this case?
15 A. Sure. 10:28:16
16 Q. Are you referring there to your report?
17 A. I am, yes.
18 Q. So why don't we mark it.
19 (Exhibit 1 was marked for identification
20 by the Court Reporter and is attached hereto.) 10:28:25
21 Q. (By Mr. Santacana) We've premarked the
22 digital version as Exhibit 1. So I guess
23 afterward, we can just mark this as 1A or something
24 in case you draw on it or something like that.
25 But go ahead. 10:28:38

1	A. Okay.	10:28:40
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2	Q. Answer the question.
---	-------------------------

3 A. Sure. I describe what my assignment is
4 on Section 4 of my report.

5 And my assignment in this matter includes 10:28:44

6 "assessing the feasibility of identifying and

7 quantifying various measures of monetary relief

8 tied to Plaintiffs' claims," including those that I

9 discuss in my report, which include, in this case,

10	unjust enrichment and plaintiffs' actual damages.	10:29:04
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11 Q. And -- sorry -- could you say again where
12 you are reading from?

13	A. This is Section 4 of my report.
----	------------------------------------

14 Q. Okay. Thank you.

15	So apart from that description of your	10:29:15
----	--	----------

16 assignment in Section 4 of your report, is there

17 anything else that you have done in this case in

18 your capacity as an expert witness?

19 A. Well --

20 MR. LEE: I'm sorry. I may have missed 10:29:29

21	it.
----	-----

22 Are you limiting to just Section 4, or

23 the whole report?

24 Q. (By Mr. Santacana) I'm saying, other

25 | than the assignment described in Section 4 -- let 10:29:36

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1 me ask it a different way. 10:29:39

2 Other than your assignment as described
3 in Section 4 of your report, has there been any
4 other assignment that you've needed to perform as
5 an expert in this case? 10:29:45

6 A. The other portion of the assignment that
7 I performed is described in my report. And it
8 talks about the apportioning of monetary relief to
9 the classes and the class members.

10 I provide examples of apportionment 10:30:08
11 methods that are available. I think my report
12 explains what I did in great detail. So, you know,
13 there's -- there's a lot that goes into that
14 assignment.

15 Q. Is there any other -- 10:30:30

16 A. And I --

17 MR. LEE: Hold on -- hold on.

18 THE DEPONENT: And I just want to make
19 sure.

20 So there's a lot that goes into that 10:30:34
21 assignment, so I've -- you know, to the extent that
22 there are other portions of my report that go into
23 my opinion, they're in my report.

24 Q. (By Mr. Santacana) Fair enough.

25 Have you reached any expert conclusions 10:30:44

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1 or opinions in this case other than those embodied 10:30:47
2 in your report?

3 A. Not at this time, I have not.

4 Q. And do you, sitting here now, have any
5 intention of presenting expert opinion in this case 10:30:57
6 other than those embodied or encompassed by your
7 report?

8 A. No, I have not been asked to do so at
9 this time.

10 Q. Did you read the expert reports that 10:31:09
11 rebut your report that were served by Google's
12 counsel?

13 A. I did, yes.

14 Q. And those are the Knittel report and the
15 Ghose report? 10:31:18

16 A. They are, yes.

17 Q. You reviewed those?

18 A. I did, yes.

19 Q. Did members of your team review those as
20 well? 10:31:24

21 A. They did.

22 Q. Is it your role in this case to provide
23 opinions that are favorable to the lawyers who have
24 retained you?

25 MR. LEE: Objection. Form. 10:31:43

1 THE DEPONENT: That -- that is not how I 10:31:43
2 understand my role, no.

3 Q. (By Mr. Santacana) How do you understand
4 your role?

5 A. My understand my role to provide an 10:31:48
6 independent opinion of my belief of what I talk
7 about in my report, which is my opinion of monetary
8 damages, specifically in this case unjust
9 enrichment and actual damages.

10 Q. If it turns out that you've made mistakes 10:32:09
11 in your report, are you open to correcting them?

12 A. Yes.

13 Q. Did you attempt to perform your
14 assignment in this case truthfully, honestly, and
15 according to a sound methodology? 10:32:21

16 A. I have, yes.

17 Q. And would you agree with me that your
18 obligation as an independent expert does not end
19 with your report; if you discover that there's
20 something wrong with it after you've served it, you 10:32:30
21 are obligated to admit that?

22 A. I don't know if I'm specifically
23 obligated to admit that, but that would be my
24 professional practice. I would never do anything
25 different than that. 10:32:45

1 Q. Fair enough. 10:32:46

2 Did you read any other expert reports in
3 this case from the plaintiffs or from Google other
4 than your own, of course, Knittel and Ghose?

5 A. I read Mr. Hochman's report. 10:33:01

6 I believe that there was another report,
7 if I'm remembering correct -- correctly, from a
8 Mr. Black. Or it might have been just a
9 declaration.

10 Q. Black had a report. 10:33:20

11 A. So -- so then it was -- then it was -- I
12 at least read parts of that report as well.

13 Q. Any others?

14 A. I may have, but I can't recall as I'm
15 sitting here. 10:33:30

16 Q. Hoffman (phonetic)?

17 A. I thought I said Mr. Hoffman.

18 Q. Mr. Hochman, yes. There's also a
19 Hoffman.

20 A. Oh, I don't recall if I did -- did or
21 not. 10:33:38

22 Oh, I'm sorry. I also -- Mr. Keegan's
23 report.

24 Q. Snyder (phonetic)?

25 A. I do not recall reading Mr. Snyder's 10:33:51

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1 report. 10:33:53

2 Q. Okay. Did you read Mr. Hochman's report

3 before finalizing your report?

4 A. No, I did not.

5 Q. The first time you had read it was after 10:34:03

6 you had finalized your report?

7 A. Correct.

8 Q. But you had conversations with him before

9 you finalized your report?

10 A. Yes, I did. 10:34:12

11 Q. How long were those conversations in

12 total?

13 A. Hours. I don't know how long.

14 Q. So --

15 A. Specifically. 10:34:19

16 Q. Less than or more than five hours,

17 roughly?

18 A. Probably less than five hours.

19 Q. Okay. And those were all before you

20 served your report? 10:34:28

21 A. Yes. I had -- I have also had a

22 conversation with him since I've served my report.

23 Q. One conversation?

24 A. Yes.

25 Q. What was it about? 10:34:38

A. It was about refreshing my recollection
on his opinions as it relates to incremental costs
and conversion tracking.

4 Those were two. I think that there might
5 be other things that were -- that we discussed. 10:35:09
6 But those were two things.

7 Q. How long was the conversation?

8	A. Probably about an hour.
---	----------------------------

9	Q. When?
---	----------

10 A. It was after I served my report. I 10:35:16

11 can't -- I can't remember exactly when, but...

12	Q. Was it in the last week?
----	-----------------------------

13 A. Probably was within the last week.

14	Q. Was it in the last 48 hours?
----	---------------------------------

15	A. No, I don't so.	10:35:28
----	--------------------	----------

16 Q. Were their lawyers on the call?

17	A. Yes.
----	---------

18 Q. Who was on the call?

19 A. Mr. Lee was on the call.

20 Q. Did he speak? 10:35:40

21	A. Yes.
----	---------

22 Q. So you and Mr. Lee and Mr. Hochman talked
23 about refreshing your recollection on Mr. Hochman's
24 opinion about incremental costs?

25	A. Yes.	10:35:51
----	---------	----------

1 Q. And his opinions about conversion 10:35:51
2 tracking?
3 A. Correct.
4 Q. Were there any other subjects you
5 discussed? 10:35:58
6 A. Those were the primary ones. I don't
7 recall any others.
8 Q. Okay. What did he tell you about his
9 opinion on incremental costs that refreshed your
10 recollection? 10:36:06
11 A. So my opinion -- in my opinion in my
12 report, I consider one set of incremental costs,
13 [REDACTED]
14 I have also looked at the other costs
15 that have been provided on some of the financial 10:36:41
16 statements related to the various areas of damages
17 that I'm looking at. And I -- and I discussed with
18 him those other costs and whether or not they would
19 be incremental.
20 Q. So take a look at Footnote 156 of your 10:37:23
21 report.
22 A. Yes.
23 Q. I believe this is the only part of your
24 report that discusses the incremental costs
25 associated with the alleged wrongful conduct. 10:37:57

1 Just assume for the moment that I'm right 10:38:02
2 about that.

3 Did your conversation with Mr. Hochman
4 involve a discussion of incremental costs other
5 than what's discussed in this footnote? 10:38:17

6 MR. LEE: Objection. Mischaracterizes
7 the footnote.

8 THE DEPONENT: Well, I believe that this
9 footnote embodies what I talked about just now as
10 well with him. 10:38:54

11 Q. (By Mr. Santacana) Okay. I think you
12 just said, in response to question before that,
13 that you've "looked at the other costs that have
14 been provided on some of the financial statements
15 related to the various areas of damages that I'm 10:39:06
16 looking at"?

17 A. Yes.

18 Q. And that you discussed "those other costs
19 and whether or not they would be incremental" with
20 Mr. Hochman? 10:39:16

21 A. That is accurate, yes.

22 Q. When you say "other costs that have been
23 provided on some of the financial statements," are
24 you referring to the financial statements that you
25 reviewed before serving your report? 10:39:28

1 A. Yes. 10:39:31

2 Q. Did you express an opinion as to whether
3 those cost were or were not incremental in your
4 report?

5 A. They are -- in my opinion is that they 10:39:41
6 were not be -- that they would not be incremental.

7 Q. And which ones in particular are you
8 talking about?

9 A. Well, I would have to have the documents
10 in front of me to -- to identify those. 10:39:51

11 Q. So just so I understand, you -- go ahead.

12 A. But I do remember, for example, there
13 were [REDACTED] as part of those. There
14 were [REDACTED] in
15 some of those. And I think that there were also 10:40:11
16 some [REDACTED] in those.

17 But I cannot remember fully all of the
18 costs that were in there as I sit here today.

19 Q. Did you discuss [REDACTED]
20 [REDACTED] 10:40:28

21 [REDACTED] with Mr. Hochman after
22 serving your report in the conversation we've been
23 discussing?

24 A. Well, I don't recall specifically if it
25 was after serving my report. Certainly before 10:40:41

1 serving my report. 10:40:46

2 Q. So -- sorry. I'm focused on the
3 conversation where your recollection was refreshed
4 as to his opinion on incremental cost.

5 And so keeping that conversation in 10:40:57
6 mind --

7 A. Which -- which? No. Start over.
8 Which conversation are we talking about?

9 Q. I'm keeping in mind the conversation you
10 had with Mr. Hochman after you served your report. 10:41:07

11 A. Okay.

12 Q. Which refreshed your recollection as to
13 his opinion on incremental costs.

14 You with me so far?

15 A. Yes. 10:41:17

16 Q. Okay. So keeping that conversation in
17 mind, which specific costs did you discuss with
18 Mr. Hochman and whether or not they qualify as
19 incremental costs?

20 MR. LEE: In that conversation. 10:41:28

21 THE DEPONENT: In that conversation.

22 MR. LEE: He's accepting that you've had
23 prior conversations, and this refreshes it. But
24 he's limiting his question to the -- the
25 conversation you had after the -- the report was -- 10:41:36

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1 MR. SANTACANA: Right. Your most recent 10:41:39
2 conversation.

3 THE DEPONENT: I am not sure that I'll
4 remember all of it. [REDACTED]

5 [REDACTED] 10:42:11
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 Q. (By Mr. Santacana) Okay. And what did
12 Mr. Lee say about incremental costs during the
13 conversation?

14 A. I don't recall Mr. Lee saying anything
15 about that. 10:42:27

16 Q. Okay.

17 A. During the conversation.

18 Q. And then you said that he also refreshed
19 your recollection as to his opinion on conversion
20 tracking? 10:42:34

21 A. Yes.

22 MR. LEE: For the record, Mr. Santacana
23 means Mr. Hochman, not Mr. Lee.

24 MR. SANTACANA: Mr. Hochman.
25 Mr. Hochman. 10:42:43

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1 Q. (By Mr. Santacana) What did he tell you 10:42:46
2 about conversion tracking during your most recent
3 conversation, Mr. Hochman?

4 A. Well -- well, generally, he refreshed my
5 recollection on our earlier conversations on how 10:43:11
6 the information gathered by Google that relates to
7 conversion tracking is collected and then used by
8 Google in its algorithms and machine learning
9 techniques that ultimately go into its -- its
10 bidding, its automated bidding process that it 10:43:46
11 provides to advertisers.

12 Q. What is the automated bidding process
13 that you're referring to?

14 A. Well, I think we are starting to get into
15 a technical area here. 10:44:09

16 I understand that there are certain
17 situations where if -- if an ad is requested, there
18 would be automated bids, an automated bidding
19 process, such that advertisers can bid for the ad
20 in an automated fashion to actually serve the ad in 10:44:28
21 an automated fashion.

22 Q. And what does it mean for a bid to be
23 automated as opposed to not automated?

24 A. Well, my understanding is that there is
25 an automation -- again, this is getting into a 10:44:41

1 technical area. 10:44:42

2 But my understanding is that there is
3 something called a manual bidding process, where
4 you can manually bid for ad -- where an advertiser
5 can manually -- manually bid for ads -- ad 10:44:50
6 placement, I should say -- versus automated.

7 Q. So would you say that this -- I guess you
8 were speaking to Mr. Hochman because you're not
9 really an expert on this particular subject?

10 A. I'm not a technical expert in this case. 10:45:06
11 That is correct.

12 Q. Well, I know you're not a technical
13 expert. But right now, we're talking about
14 advertisers' bidding processes. So I just -- is
15 that a subject that you are an expert in? 10:45:16

16 A. I -- I would say that I have familiarity
17 with it up to the point of being able to calculate
18 damages.

19 So I'm not an expert in the technology,
20 but I am expert -- I have enough familiarity to 10:45:30
21 calculate damages for those types of cases, for
22 these types of cases.

23 Q. Has there been another expert engagement
24 in which you have calculated damages based on
25 automated advertisement bidding processes on the 10:45:45

1 Internet? 10:45:51

2 A. What was that last part? I didn't hear

3 the last part of your question.

4 Q. On the Internet?

5 A. Yes. 10:45:56

6 Q. Which case?

7 A. Brown.

8 Q. Has there been any other?

9 A. Not that I can recall, no.

10 Q. How did you become familiar with 10:46:02

11 automated bidding such that you could opine on

12 damages?

13 A. Through my work in -- in this case, as

14 well as my work in the Brown case, and my

15 discussions with the technical experts. 10:46:15

16 Q. Before you were retained in Brown, did

17 you have any familiarity with the automated bidding

18 process such that you could calculate damages?

19 A. I never attempted to. But I had heard --

20 I had heard of and read information on the 10:46:42

21 automated bidding process up until then. But I had

22 never attempted to, so I don't know if I could have

23 or couldn't have.

24 Q. You mentioned manual bidding. Can you

25 tell me what that is? 10:46:56

1 A. So my understanding is that that allows 10:46:57
2 manual bidding -- again, this is a technical
3 expert -- a technical area, and I'm not a technical
4 expert in this case.

5 But my understanding is that allows -- 10:47:09
6 manual bidding allows an advertiser to set a bid
7 price in a manual -- set a price for their ad in a
8 manual fashion versus an automated fashion.

9 Q. In a situation where an advertiser is
10 engaging in manual bidding, is it your 10:47:47
11 understanding that they are bidding on a particular
12 performance metric for the ad?

13 A. I don't think I have an understanding of
14 that -- how that -- how that works in that much
15 detail. 10:48:03

16 Q. What is the bid that is manual in your
17 example? What is it for?

18 A. Well, my understanding is that you would
19 be bidding for an ad placement to place an ad.

20	Q. What is it called a "bid" as opposed to a	10:48:17
21	"price"?	

22 A. Well, my -- my understanding is that
23 you -- from a bidding standpoint that there are
24 multiple potential advertisers that could actually
25 place the ad. And so one is placing an ad in a

10:48:33

1 potentially competitive situation. 10:48:41

2 Q. And how do you understand the bid to be
3 expressed in monetary terms?

4 A. I -- this is beyond my technical
5 understanding of how that -- how that works. 10:48:56

6 Q. Fair enough.

7 So suffice it to say, though, the bid
8 that the advertiser is placing, whether it's manual
9 or automated, your understanding is that that is in
10 exchange for the placing of ads? 10:49:09

11 A. That's roughly my understanding, yes.
12 Again, I'm not the technical expert here.

13 Q. Apart from your work with Mr. Hochman and
14 your work on these cases -- well, actually, let me
15 start over. 10:49:31

16 Why don't you tell me, what is the basis
17 of your understanding of the testimony you just
18 gave about the automated and manual bidding
19 processes?

20 A. It's reading the documents and here in my 10:49:40
21 discussion with Hochman.

22 Q. Reading the documents that were produced
23 in this case?

24 A. Correct.

25 Q. Does it also include reading the 10:49:47

1 documents produced in the Brown case? 10:49:49

2 A. I don't -- I don't -- I mean, if I did
3 learn something in the Brown case that I couldn't
4 forget, there's potential -- that that potentially
5 could be part of my memory as to how this -- how 10:50:01
6 this works.

7 But, certainly, I didn't use any Brown
8 documents in my calculations here that were not
9 also -- there were some overlaps. So there were
10 some documents produced in this case as well as the 10:50:17
11 Brown case.

12 Q. Right. Of course. And I understand that
13 you're only human.

14 My question is just, your understanding
15 of the automated bidding process that you've been 10:50:24
16 talking about, did that come from documents in this
17 case, or both documents in this case and in this
18 other case?

19 A. I -- I don't recall as I sit here.

20 Q. Other than documents, litigation 10:50:41
21 documents, produced by Google, your understanding
22 of the automated bidding process, is it based on
23 anything else?

24 A. Well, I did do publicly -- public
25 research. 10:50:53

1 Q. Okay. 10:50:53

2 A. But I don't recall if anything came in

3 through public research on that particular topic.

4 Q. What do you mean, "if anything came in

5 through public research"? 10:51:00

6 A. That -- that would influence my opinion

7 on the subject that we've just been talking about.

8 Q. If it did, would you have cited it in

9 your report?

10 A. If -- yeah, if there -- if there was 10:51:16

11 information that I relied upon that is public, I

12 cited it in my report.

13 Q. Okay. And then you said, in addition to

14 documents from the litigation, potentially public

15 research if you cited it in your report, also your 10:51:32

16 basis of your understanding comes from Hochman?

17 A. Correct.

18 Q. Okay.

19 (Discussion off the stenographic record.)

20 MR. LEE: Eduardo, do you mind just 10:51:48

21 keeping your voice a little up.

22 THE DEPONENT: Sure.

23 MR. LEE: It's hard to hear.

24 Q. (By Mr. Santacana) And just to put a

25 fine point on it: The understanding that comes 10:52:01

1 from Hochman with respect to the automated bidding 10:52:03
2 process, that's from your conversations with him
3 before you finalized your report, correct?

4 A. Correct.

5 Q. It is not from his report? 10:52:12

6 A. That is correct.

7 Q. What about more generally the market
8 dynamics of the online advertising industry? You
9 talk about that a little bit in your report.

10 What's the basis of your understanding of 10:52:32
11 that?

12 A. The basis of my understanding of that is
13 twofold: I've had cases, litigation, patent
14 infringement cases, in the online advertising
15 space; plus I've also helped companies license 10:53:07
16 patents in the online advertising space.

17 I should say online and mobile space,
18 generally.

19 Q. Sure. And I include mobile and online
20 for -- at least for purposes of today. 10:53:33

21 Your reference to litigation patent
22 infringement cases, in those cases, you were
23 providing damages analyses relating to patent
24 infringement in the online advertising space?

25 A. Yes. 10:53:48

1 Q. And those analyses included licensing 10:53:48
2 analysis?

3 A. Those -- in those cases, as best -- the
4 best of my recollection, related to a reasonable
5 royalty. 10:54:09

6 Q. Okay. And do you happen to recall which
7 cases those are?

8 A. I do not as sit here. I could look at my
9 CV to try to see if I could -- if any of them
10 actually went all the way to deposition and/or 10:54:22
11 trial.

12 Q. Do you recall ever testifying about the
13 online advertising industry?

14 There's an Amazon IRS case, but I think
15 that's a tax case? 10:55:30

16 MR. LEE: Is that a new question, or do
17 you want him to answer the first question?

18 MR. SANTACANA: Just helping him.

19 MR. LEE: Not a question at all?

20 THE DEPONENT: As I'm sitting here, I 10:55:37
21 don't see any case that's gone to -- at least
22 deposition.

23 As it relates to that, that Amazon case
24 is a tax case.

25 Q. (By Mr. Santacana) Okay. So you've 10:55:49

1 looked at your expert testimony disclosure here. 10:55:50

2 You don't see any online advertising space cases
3 that made it to deposition or trial?

4 A. Correct.

5 Q. You've issued reports in such cases? 10:56:02

6 A. I don't think so. I don't think it's
7 gone all the way to a report.

8 Q. Okay. And so far, we've been talking
9 about the patent infringement cases. You also
10 mentioned that you have helped companies with 10:56:18
11 licensing in the online advertising space?

12 A. Yes.

13 Q. That was a consulting-type arrangement?

14 A. Correct.

15 Q. For licensing patents relating to online 10:56:28
16 advertising?

17 A. Correct.

18 Q. Got it.

19 Again asking about the market dynamics in
20 the online advertising space, apart from the 10:56:46
21 consulting you did in patent infringement cases and
22 to help companies license patents, is there any
23 other basis for your understanding of the market
24 dynamics of the online advertising space?

25 A. Not beyond what I've already talked about 10:57:05

1 in my previous testimony here today. 10:57:08

2 Q. Relating to the automated bidding
3 process?

4 A. Well, related to my research.

5 Q. Right. 10:57:20

6 A. And preparation of my current report as
7 well as my Brown report.

8 Q. Did you discuss the market dynamics of
9 the online advertising industry with Mr. Hochman
10 before finalizing your report? 10:57:32

11 MR. LEE: Objection. Vague.

12 THE DEPONENT: As I sit here, I'm not
13 recalling specifically speaking about that, but it
14 may have come into our discussions.

15 Q. (By Mr. Santacana) You're aware that 10:58:28
16 Christopher Knittel's expert report discusses the
17 market dynamics of advertising in mobile apps,
18 right?

19 A. Well, I have read his report. So I'm
20 aware of what he talks about in his report. 10:58:45

21 Q. And you're aware that's one subject he
22 discusses?

23 A. He -- yes, he does.

24 Q. Would you consider yourself an expert in
25 that area, the market dynamics of advertising in 10:58:55

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1 mobile apps? 10:58:58

2 A. I would consider myself an economic
3 expert that has the ability to look at the
4 information here and provide an appropriate
5 opinion. 10:59:16

6 To the extent that that requires
7 consideration of the documents that look at the
8 market dynamics of the industry, yes, I'm -- I'm
9 fully an expert to that level.

10 But I don't hold myself as an expert and 10:59:31
11 I don't -- don't do consulting in that field.

12 Q. I'm having a little trouble parsing your
13 answer.

14 What is the difference between
15 considering yourself an economic expert with the 10:59:48
16 ability to look at the information here and provide
17 an opinion on the one hand; and, on the other hand,
18 holding yourself out as an expert in the field?

19 A. Well, I don't -- I do not provide
20 companies -- I do not provide companies with -- or 11:00:04
21 do not hold myself out to provide companies with
22 consulting or strategy as it relates to the market
23 dynamics as you were discussing them.

24 I do provide economic analyses as it
25 relates to damages in this case or licensing in 11:00:22

1 other cases that relate to -- that have related to 11:00:30
2 this field.

3 Q. Do you see the damages calculations you
4 did in this case analogous to licensing opinions
5 you have issued in other cases in any way? 11:00:42

6 A. Could you repeat that?

7 Q. Do you see the damages opinion that you
8 have given in this case analogous in any way to the
9 licensing opinions you've given in other cases?

10 A. Certainly from a -- certainly from a 11:01:30
11 methodology standpoint, there are certain areas
12 that are analogous.

13 Q. What are those --

14 A. Well, in cal- -- in licensing, one looks
15 at the profitability of products and isolates the 11:01:50
16 profitability of products, as I've done here in the
17 unjust enrichment case. One looks at comparables
18 as I've done here in parts of my reports -- part of
19 my report as well.

20 Q. By "comparables," you're referring to, 11:02:11
21 for example, other market transactions for data as
22 you describe them in your actual damages opinion?

23 A. That -- that is in part correct, yes.

24 Q. Is the structure of your actual damages
25 opinion with respect to its consideration of what a 11:02:27

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1 user would be willing to give up certain data for, 11:02:32
2 is that, in your mind, analogous to the
3 hypothetical negotiation structure for a reasonable
4 royalty?

5 A. No, it's not -- it's not analogous to 11:02:48
6 that. That's a different -- that's a different
7 analysis.

8 Q. As I read your actual damages opinion,
9 you do seem to be imagining some type of
10 hypothetical negotiation; is that fair to say? 11:03:10

11 MR. LEE: Objection. Form.

12 THE DEPONENT: I'm -- no, I don't know.
13 I -- I wouldn't call it a "hypothetical
14 negotiation."

15 Q. (By Mr. Santacana) Why not? 11:03:25

16 A. Because what I'm doing is calculating the
17 fair -- the fair market value -- the fair value
18 based on a market transaction.

19 I don't -- I'm not imaging a hypothetical
20 negotiation, if you would, like one does in a 11:03:39
21 patent infringement case.

22 Q. Okay. I understand.

23 How many expert reports have you issued
24 related to consumer privacy damages -- consumer
25 privacy damages? 11:04:11

1 A. Two, if you -- this one as well as Brown. 11:04:17

2 Q. Before that, you'd never done it before?

3 A. I don't -- I don't believe I had issued

4 an expert report on consumer privacy damages, no.

5 Q. Have you ever testified as to consumer 11:04:31

6 privacy damages other than right now and in Brown?

7 A. I do not believe so, no.

8 Q. Have you ever been retained to consult

9 with any company or other entity on the subject of

10 consumer privacy? 11:04:54

11 A. I don't recall being retained in any case

12 like that -- other case like that.

13 Q. Before you were retained in Brown, had

14 you ever before issued an expert opinion of any

15 kind as to the value of consumers' online activity 11:05:19

16 data?

17 A. Could you repeat that? I want to make

18 sure I answer that correctly.

19 Q. I'm going to try to make it less of a

20 mouthful. 11:05:35

21 Before you were retained in Brown, had

22 you ever issued an expert opinion of any kind as to

23 the value of consumer data?

24 A. Not -- no, not an expert -- I have not

25 issued an expert report on the value of consumer 11:06:01

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1 data. 11:06:03

2 Q. Or provided expert opinion on that

3 subject?

4 A. I have not provided expert opinion on

5 that subject. I have consulted on transactions 11:06:10

6 related to that subject.

7 Q. What do you mean?

8 A. I worked on transactions where companies

9 were acquired for access. And my understanding of

10 the acquisition was that it was related -- or that 11:06:42

11 it related to the data that was being acquired.

12 MR. LEE: Just one second. I didn't

13 represent to you in any of that work, so I don't

14 know --

15 THE DEPONENT: Yes. 11:06:59

16 MR. LEE: -- but to the extent any of

17 that work is governed by confidentiality agreements

18 or protective orders, I just want to be mindful of

19 that. Okay?

20 THE DEPONENT: Yeah. I'm not going to be 11:07:06

21 able to say anything about that, because it is all

22 governed by...

23 MR. LEE: I think you're fine now.

24 THE DEPONENT: Yeah.

25 MR. LEE: But I just want to issue that 11:07:13

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1 warning, because I don't know -- I don't know what 11:07:14
2 governs.

3 Q. (By Mr. Santacana) So just to clarify,
4 you said you have worked on transactions where the
5 companies were acquired because the acquiring 11:07:22
6 company wanted that -- the acquired company's data?

7 A. Correct.

8 Q. And the data in question was consumer
9 data?

10 A. That is my recollection, yes. 11:07:37

11 Q. Was it online data or some other type of
12 data?

13 A. I really don't feel like I can go any
14 further than that.

15 Q. Why? 11:07:46

16 A. Because these are all -- these are all --
17 my case that I work on or my matter that I worked
18 is confidential, and so I'm not at liberty to say.

19 Q. Well, I think you can tell me whether it
20 was online data or not. I'm not sure that 11:08:00
21 specifies any particular entity.

22 A. Well --

23 MR. LEE: You have to be comfortable with
24 that, based on --

25 THE DEPONENT: Yeah. 11:08:15

1 MR. LEE: -- your understanding of your 11:08:15
2 agreements you entered into. Obviously,
3 Mr. Santacana can't answer that for you because he
4 wasn't a party to any of that, nor was I.

5 So I think answer it if you can. But if 11:08:23
6 you don't feel comfortable, that's fine too.

7 THE DEPONENT: Yeah. At this point I
8 just don't feel comfortable.

9 MR. SANTACANA: Okay. We'll have to talk
10 about that during the break. 11:08:32

11 Q. (By Mr. Santacana) Did you -- I think
12 you said that, in those transactions, you were
13 valuing consumer data?

14 A. No, I was not.

15 Q. You were not. Were you valuing the 11:08:44
16 companies to be acquired?

17 A. Yeah. Yes.

18 Q. And part of valuing the company,
19 presumably, included valuing the value of the data
20 to be acquired? 11:08:59

21 A. Correct.

22 Q. Okay. What methodology did you use to
23 appraise the data to be acquired?

24 A. I -- I cannot say.

25 Q. Your methodology was confidential? 11:09:15

1 A. I -- my methodology -- two things: One 11:09:17
2 is I think the whole transaction is confidential;
3 my role in the transaction is confidential.

4 So I'm -- I'm not able to say any more
5 about that transaction. 11:09:33

6 Q. Okay. Well, let me ask you this: Before
7 this case and Brown, had you ever applied any
8 methodology to valuing consumer data?

9 A. You're testing the limits of my memory
10 in -- in addition to confidentiality. So I do not 11:10:01
11 recall specifically how the valuation was done in
12 that case, in that -- I shouldn't say it's a case.
13 It's a matter. It's a transaction.

14 Q. I think you said earlier that your task
15 or your goal in the actual damages opinion was to 11:10:22
16 determine the fair market value of the data that's
17 at issue in this case; is that fair?

18 A. A fair value, yes.

19 Q. Is that different from fair market value?

20 A. Yeah, I think -- I think I misspoke when 11:10:37
21 I said "fair market value." That's a defined term
22 in accounting.

23 Q. And you don't mean to assume the burden
24 of that term with respect to this opinion?

25 A. I'm not even sure that -- fair market 11:10:47

1 value is a different -- a different standard when 11:10:49
2 you're valuing a company or a transaction. And I'm
3 not -- I was not valuing a company in that -- in
4 this case.

5 Q. Does the data in question in this case 11:11:02
6 have a fair market value?

7 A. I -- that would go beyond my assignment
8 in this case, and I haven't -- I haven't determined
9 that.

10 Q. Do you have an opinion as to whether the 11:12:46
11 data at issue in this case has a fair market value?

12 A. I don't have that opinion. I have not
13 formed an opinion on that.

14 What I have calculated here is a fair
15 price to incentivize this particular group of 11:12:57
16 people, the class members, to provide access to
17 their data.

18 Q. Have you ever expressed an expert opinion
19 in any engagement as to the fair market value of
20 consumer data? 11:13:20

21 A. I don't recall doing so.

22 Q. Are you aware of any authority that would
23 suggest that there is a fair market value to
24 consumers' online data?

25 A. I am not aware of -- of any authority on 11:13:47

1 that as I sit here. 11:13:50

2 Q. Are you aware of any authority that
3 suggests how to value consumers' online data?

4 MR. LEE: Can you ask that again? I'm
5 sorry. 11:14:07

6 Q. (By Mr. Santacana) Are you aware of any
7 authority that suggests how to value consumers'
8 online data?

9 A. Not as I sit here, no.

10 Q. Is there a difference between the value 11:14:32
11 of a consumer's online data to that consumer and
12 the fair market value of the same data?

13 A. Could you repeat that?

14 Q. Is there a difference between the value
15 of a consumer's online data to that consumer in the 11:15:12
16 fair market value of the same data?

17 A. I -- that -- that -- that would be
18 something I would need to investigate. I have not
19 investigated that as part of my report.

20 Q. Can you take a look at paragraph 130? 11:15:27

21 A. Yes.

22 Q. In that paragraph, you say, "actual
23 damages can be determined as a function of the
24 payments necessary to incentivize an individual to
25 knowingly surrender the choice to keep activity on 11:15:44

1 mobile apps private and allow an organization to 11:15:47
2 track app activity data."

3 Do you see where I'm reading that?

4 A. Yes.

5 Q. How does that task of determining actual 11:15:59
6 damages differ from the task of determining the
7 fair market value of the data at issue in this
8 case?

9 MR. LEE: Under the rule of completeness,
10 I'm going to finish the rest of that paragraph. 11:16:11

11 "I have therefore identified and
12 considered various indicators of both the payments
13 that Google and other organizations have paid to
14 individuals to track their online activity and the
15 fees that individuals have paid to various 11:16:24
16 organizations in their attempt to increase online
17 privacy and/or avoid tracking."

18 I think with that full reading, you can
19 try to answer counsel's question.

20 THE DEPONENT: I -- I mean, in -- in this 11:16:55
21 case, fair -- fair market value, my understanding
22 of fair market value is that you have a willing
23 buyer and a willing seller.

24 In this case, these were not willing
25 participants. What I have done here is to try to 11:17:10

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1 determine a price based on comparables that 11:17:15
2 participants have been willing to separate with
3 their data for. And so --

4 Q. (By Mr. Santacana) Why --

5 MR. LEE: Hold on. 11:17:25

6 THE DEPONENT: And so this, in my
7 opinion, is a very conservative value relative to
8 what they would have -- would have actually
9 demanded, what these participants would have
10 actually demanded. 11:17:41

11 Q. (By Mr. Santacana) Why would you use
12 comparables in which the participants were willing
13 to part with their data to determine what an
14 unwilling participant would need to be paid to part
15 with that data? 11:17:55

16 A. I think that that's a very conservative
17 view of what the actual damages would be. And
18 so -- and it's the best available information to
19 make that calculation.

20 And so I believe that it's appropriate in 11:18:14
21 this case, given the information that's available,
22 as well as my task to calculate actual damages.

23 Q. So as I understand your task, you were
24 essentially trying to determine the price at which
25 an unwilling seller of data would become a willing 11:18:39

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1 seller, right? The point at -- the fulcrum at 11:18:43
2 which the person goes from no, I won't, to yes, I
3 will, right?

4 A. I think that this is -- this is a floor,
5 if you will, for what that would be. I think it 11:18:57
6 likely would be higher than this, so I think it's a
7 very conservative view of what you're asking.

8 Q. I understand you think it's a
9 conservative view.

10 When you say it's a "floor," is that 11:19:10
11 different than what I'm calling the fulcrum? It's
12 the point at which the seller goes from unwilling
13 to willing?

14 A. It's -- it's yes. I guess -- I guess
15 we're talking in similar terms. 11:19:22

16 Q. So, in essence, you are trying to imagine
17 a transaction between a willing buyer and a willing
18 seller and determining at what price the buyer and
19 the seller are both willing to buy and sell, right?

20 MR. LEE: Objection to form. 11:19:42
21 Mischaracterizes.

22 THE DEPONENT: No, I -- I don't believe
23 that that's correct.

24 Q. (By Mr. Santacana) How is that different
25 from determining the price at which the seller is 11:19:47

1 willing to sell? 11:19:50

2 A. In -- in this case, I believe that this
3 is -- we -- we do have examples of willing -- of
4 willing sellers.

5 Q. I know. 11:20:05

6 A. For -- for this particular transaction.
7 However, the -- the class is not a willing seller.
8 So I look at this as a floor.

9 Q. What do you mean --

10 A. The price -- 11:20:18

11 MR. LEE: Hold on.

12 THE DEPONENT: The price would likely be
13 higher in -- in this case.

14 MR. LEE: Just for the record, Eduardo, I
15 know you don't mean to do it, but I think 11:20:27

16 Mr. Lasinski is a very methodical speaker, so he's
17 not always finished with his answer even when
18 there's a pause.

19 So I think we should just slow it down
20 just a beat so that we're not talking over each 11:20:36
21 other.

22 Q. (By Mr. Santacana) You said in this
23 case, we have examples of willing sellers for this
24 particular transaction.

25 What did you mean by "this particular 11:20:48

1 transaction"? 11:20:51

2 A. What I meant -- what I meant in this case
3 is the market study in which Google has paid
4 participants to access their information, in other
5 words, the Ipsos study. Google itself has paid 11:21:08
6 willing participants a certain amount of money to
7 access their -- to access their data.

8 I look -- I look at that as a floor for
9 the actual damages because the participant groups
10 are different between willing -- a willing group 11:21:32
11 and an unwilling group.

12 Q. How do you know they're different?

13 A. Because in this case -- because in this
14 case, the participants in this study have signed up
15 to provide access to -- Google access to their 11:22:03
16 data. And the class -- the class has specifically
17 indicated that it doesn't want Google to access its
18 data by turning -- turning its SWAA off. So they
19 are an unwilling participant.

20 Q. You posit that the class members in this 11:22:52
21 case who had turned WAA off would nevertheless
22 become willing sellers at a particular price,
23 namely at least \$3 per device, right?

24 A. No. What I'm -- what I'm positing is
25 that they would -- that that is a very conservative 11:23:16

1 floor for actual damages. And so that -- that 11:23:19
2 would be a floor for actual damages, a floor for
3 what that calculation would look like.

4 Q. Have you tried to calculate actual --
5 actual damages in the case, or just tried to 11:23:35
6 calculate the floor of actual damages?

7 MR. LEE: Objection to form.

8 THE DEPONENT: I -- I think it's an
9 appropriate calculation for actual damages. I
10 think it could be higher. But it's conservative. 11:23:53

11 Q. (By Mr. Santacana) You have said that
12 it's conservative many times already today, and you
13 have called it a floor multiple times. So I'm just
14 trying to understand.

15 Was your task to calculate the floor, or 11:24:06
16 was your task to calculate the actual damages to
17 the actual class members?

18 A. My task was to calculate the actual
19 damages to the actual class members. I believe
20 I've done that in a conservative manner. 11:24:19

21 Q. What does that mean? Did you get it
22 right or not?

23 A. I do -- I do have it right, yes.

24 Q. Then why do you say it's conservative?

25 A. Because it's -- because at the end of the 11:24:33

1 day, it -- there's a potential for it to be higher. 11:24:37

2 But I believe -- but I believe, based on
3 the information that I have available to me,
4 that -- that it is the best estimate of what would
5 be appropriate in this case. 11:24:48

6 Q. All right. Is there a potential that
7 it's a lot higher?

8 MR. LEE: Objection. Form.

9 THE DEPONENT: Not that I'm aware of, no.

10 Q. (By Mr. Santacana) You're not concerned 11:24:59
11 that your actual damages opinion is grossly
12 undercompensating the class?

13 A. I am not.

14 Q. Why not?

15 A. Because I think, based on the information 11:25:13
16 available to me, that this is an appropriate
17 conservative estimate.

18 Q. I know that's what you think. That's
19 your conclusion.

20 I want to know why that's your 11:25:20
21 conclusion.

22 A. I -- I think I just answered.

23 Q. No, you didn't.

24 A. Okay. Well, I think I did.

25 Q. Why do you think it's appropriate? 11:25:28

1 A. Based on the -- 11:25:29

2 MR. LEE: Asked and answered.

3 Go ahead.

4 THE DEPONENT: Based on the information

5 that's available to me, I think that it -- that -- 11:25:34

6 that it is -- that it is appropriate.

7 Q. (By Mr. Santacana) The Ipsos study paid
8 \$3 a month?

9 A. In certain cases, yes.

10 Q. But your actual damages opinion pays \$3 11:25:47
11 just once?

12 A. That is correct.

13 Q. Why?

14 A. Because based on the information that I
15 have, I am able to determine that -- I am able to 11:26:08
16 determine the number of devices that had SWAA off
17 at at least a given point in time.

18 I am not able to determine with certainty
19 that it had SWAA off for -- SWAA off and
20 actually -- and actually met with other 11:26:49
21 requirements for the damages calculation, such as
22 hitting third-party sites with Google trackers on
23 them, after that initial calculation -- after that
24 addition SWAA-off calculation.

25

5

8

Q. Let's assume that it's available.

9

Would that change your opinion?

10

A. I -- I don't know, because I don't have

11:27:48

11

that --

12

MR. LEE: Are you representing that

13

you'll -- you're going to make data available that

14

you've previously represented was deleted?

15

MR. SANTACANA: James.

11:27:55

16

MR. LEE: I'm just trying to understand

17

your question.

18

Q. (By Mr. Santacana) My question is,

19

assume the data's available. Would that change

20

your actual damages opinion?

11:28:02

21

MR. LEE: Are you making that

22

representation or not?

23

MR. SANTACANA: I'm not answering your

24

question, James. It's not my deposition.

25

MR. LEE: I'll take that as a no.

11:28:09

1 THE DEPONENT: So I don't -- I don't have 11:28:11
2 that information, so I don't know if it would
3 change it. I can't know unless I had that
4 information.

5 Q. (By Mr. Santacana) Well, I asked you why 11:28:20
6 you assigned \$3 per device rather than \$3 per
7 month, and you said [REDACTED]

8 [REDACTED]
9 [REDACTED]

10 And my question is, if you knew [REDACTED] [REDACTED]
11 [REDACTED]
12 [REDACTED] then would it be \$3
13 per month or some other calculation, or would it
14 still just be \$3 per device?

15 A. I don't know because I don't have that 11:28:48
16 information. I would have to look at it, study it,
17 and analyze it with all the other factors of the
18 case. And since I don't have it, I can't answer
19 that question.

20 Q. Then why do you say that that information 11:28:58
21 is the reason why you have opined that actual
22 damages is the \$3 once not \$3 per month or \$3 per
23 something else?

24 A. You -- because you asked that question.
25 Again, I don't know -- I don't know the answer, and 11:29:17

1 I won't know the answer until I get -- unless I got 11:29:19
2 the information.

3 Q. Is the Ipsos --

4 A. But that's -- but that's -- that's a
5 potential reason why. But I can't answer it in any 11:29:27
6 more detail than I have.

7 Q. Is the Ipsos study comparable to the
8 transaction you're imagining in paragraph 130?

9 MR. LEE: Objection to the use of -- the
10 continued use of "imagined." 11:29:45

11 Q. (By Mr. Santacana) Hypothesizing. I
12 don't mean to say it's make believe.

13 A. I believe that the Ipsos study provides
14 the best data point --

15 Q. Is it comparable -- 11:30:01

16 A. -- for --

17 MR. LEE: Hold on.

18 A. -- provides the best data point for a --
19 for the actual damages calculation.

20 Q. (By Mr. Santacana) Is it comparable? 11:30:11

21 A. Yes, it is sufficiently comparable for
22 what I'm using it for. Yes.

23 Q. Then why did you change the payment from
24 \$3 per month to \$3 per device?

25 Actually, let me strike that for a 11:30:27

1 second. 11:30:29
2 [REDACTED]
3 [REDACTED]
4 A. Yes.
5 [REDACTED] 11:30:38
6 A. Yes.
7 [REDACTED]
8 [REDACTED]
9 A. I did do that, yes.
10 Q. You did do that. 11:30:49
11 [REDACTED]
12 [REDACTED]
13 A. I mean, ultimately, I thought it was more
14 appropriate and -- and conservative to do it -- to
15 do a one-time calculation based on the information 11:31:02
16 that I had available to me.
17 Q. Why was it more appropriate to do a
18 one-time calculation?
19 MR. LEE: Asked and answered.
20 THE DEPONENT: Yeah. 11:31:16
21 MR. LEE: Go ahead and answer it again if
22 you want.
23 THE DEPONENT: Again, even if I -- even
24 if [REDACTED]
[REDACTED], 11:31:28

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[REDACTED]

[REDACTED]

[REDACTED].

And so in this case, to be, as I've said
in the past, appropriate and conservative, I did
it -- I calculated a one-time payment per device.

11:31:52

Q. (By Mr. Santacana) And why would you pay
a SWAA-off device if they never hit a third-party
tracker site at all?

A. I think it's unlikely that a
third-party -- that -- it's unlikely that a third
party -- that a SWAA-off device would not hit a
third-party tracker. It's -- it's very likely that
it would based on usage as well as the amount of
trackers that are out there.

11:32:16

Q. You would agree that different people
would hit third-party trackers different amounts
depending on their usage patterns?

11:32:36

A. That may be -- that may be accurate.

Q. It may be accurate?

You think it's possible that every member
of the class has hit the exact same number of
third-party trackers?

11:32:58

A. No.

Q. Okay. So it is accurate?

A. It is -- that is accurate.

11:33:05

1 Q. Okay. So is it fair to say, then, that 11:33:06
2 your actual damages opinion is that each device
3 should be compensated \$3 once because it is
4 extremely unlikely -- excuse me -- it is extremely
5 likely that they were exposed to the allegedly 11:33:30
6 wrongful conduct at least once?

7 A. Yes.

8 Q. What if they were exposed to the
9 allegedly wrongful conduct a thousand times? How
10 could their actual damages only be \$3, but somebody 11:33:44
11 who is exposed once also has damage of \$3?

12 MR. LEE: Asked and answered.

13 Go ahead and answer it again.

14 THE DEPONENT: I -- again, I don't think
15 that you could calculate with certainty which 11:34:04
16 member, based on the data available to me, would
17 hit it once or a thousand times.

18 I think to incentivize someone to give up
19 their information, whether it's once or a thousand
20 times, you would have to pay them. 11:34:23

21 And so...

22 Q. (By Mr. Santacana) A nonzero amount?

23 A. You -- you would have to pay them. And
24 in my opinion, a fair price -- a fair value for
25 that is \$3. 11:34:37

1 Q. And is that fair value regardless of the 11:34:39
2 amount of data in question?

3 A. Yeah, in this case, I think -- I think
4 that a uniform amount per device is appropriate.

5 Yes. 11:35:00

6 Q. Why?

7 MR. LEE: Asked and answered.

8 Go ahead.

9 THE DEPONENT: Well, for example, the --
10 the Ipsos study, that's what they pay. They -- 11:35:10
11 they pay a user \$3 per device per month, no matter
12 how much usage.

13 There -- there certainly is difference --
14 differences between Ipsos users, but they are not
15 getting compensated differently per device. 11:35:29

16 Q. (By Mr. Santacana) They're not. That's
17 true.

18 How do you know that the \$3 per month is
19 not grossly over-incentivizing users in order to
20 get a representative sample into the survey? 11:35:42

21 A. If -- based on -- based on a market
22 transaction or a comparable of what -- what needs
23 to be paid to get someone to provide their
24 information, that price -- the \$3 -- is set not
25 only based -- not only based on the Ipsos study, 11:36:37

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1 but there are other studies that are out there 11:36:39
2 that -- for example, that I talk about in my report
3 that actually provide more value than three
4 bucks -- \$3 per device.

5 So it's not only the Ipsos study in which 11:36:52
6 Google has actually paid users, but there are other
7 studies that pay more per device than \$3. So I
8 think \$3 is an appropriate and a conservative
9 amount for actual damages.

10 MR. LEE: We've been going about an hour. 11:37:12

11 MR. SANTACANA: I have a couple more on
12 the Ipsos study, and then --

13 MR. LEE: Okay.

14 MR. SANTACANA: -- we'll switch to a
15 different subject and -- 11:37:18

16 MR. LEE: Sure.

17 MR. SANTACANA: -- we can take a break
18 first.

19 Q. (By Mr. Santacana) Are you opining in
20 this case that none of the participants in the 11:37:24
21 Ipsos study would have accepted less than \$3 to
22 participate?

23 MR. LEE: Objection to form.

24 THE DEPONENT: Well, certainly none of
25 the -- none of the participants did accept less. 11:37:43

1 In fact, they got significantly more than \$3. 11:37:46

2 Q. (By Mr. Santacana) They weren't
3 negotiating one-on-one with Google to participate
4 in the study, right? They were just offered a
5 one-size-fits-all amount? 11:37:57

6 A. That is correct. But their -- their
7 compensation was significantly higher than \$3.

8 Q. It was \$3 per month?

9 A. Plus, on top of that, they got paid for
10 their other devices, plus potentially a bonus, plus 11:38:10
11 a sign-up fee, plus they got a router.

12 So there was significantly more
13 compensation.

14 Q. So back to my question.

15 Are you opining in this case that none of 11:38:24
16 the participants in the Ipsos study would have
17 accepted less than \$3 to participate, had that been
18 offered, per month?

19 MR. LEE: Calls for speculation.

20 THE DEPONENT: I have not formed that 11:38:39
21 opinion, no.

22 Q. (By Mr. Santacana) Then how do you know
23 that it's comparable to the opinion you did form
24 with respect to the incentivization required to get
25 a class member to give up the data in question in 11:38:49

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1 this case? 11:38:51

2 A. Because -- because in that -- what was --

3 a market transaction such as this, plus the other

4 information that I discussed in my report that

5 actually is higher per device, plus incentivize -- 11:39:03

6 plus, as you said, incentivizing a variety of folks

7 to actually sign up to the study, plus the fact

8 that they're willing participants as opposed to the

9 class, which would be unwilling, I think \$3 is an

10 appropriate price. 11:39:27

11 I don't think it gross -- would be

12 grossly overstating a price. That would be

13 appropriate.

14 Q. I appreciate your answer, but my question

15 was a little bit different. 11:39:37

16 The question was: How do you know that

17 the Ipsos study's payments are comparable to the

18 opinion you formed in this case with respect to the

19 incentive required to get a class member to give up

20 their data if you do not know whether the 11:39:54

21 participants in the Ipsos study would have accepted

22 less money?

23 A. I don't believe that it -- I believe that

24 there is a chance that they would have accepted --

25 that certain would have accepted less money. 11:40:14

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1 But I think overall, to get it -- Google, 11:40:16
2 as indicated, to get a fair sample or
3 representative sample, that this is the
4 compensation, that this is the compensation that is
5 necessary to actually incent users. 11:40:28

6 It's greater than the \$3 that we talked
7 about. It's not just the \$3. It's -- it's more
8 than that.

9 And in this case, I calculated an
10 appropriate amount for unwilling participants. So 11:40:44
11 I think that that's -- it's the right amount.

12 Q. Why should the price paid to the
13 unwilling participants be lower than the price paid
14 to the Ipsos participants?

15 A. Well, at the end of the day, I'm using 11:41:06
16 that as a comparable. It's -- it ultimately is the
17 same amount. It's the same amount per device.

18 Q. But, it's a lot less, right? Because
19 Ipsos is per month, and this is one time.

20 So my question is, why do you propose to 11:41:20
21 pay this class less money than Google pays Ipsos
22 participants?

23 A. I think -- as I said before, I think that
24 that's a conservative value --

25 Q. I know -- 11:41:32

1 A. -- to get them to sign up. 11:41:32

2 MR. LEE: Hold on.

3 THE DEPONENT: To get --

4 MR. LEE: Please let him finish.

5 THE DEPONENT: To get them to sign up. 11:41:33

6 O. (By Mr. Santacana) I know the number is

7 | lower, which I think is what you mean by

8	"conservative."
---	-----------------

9 My question is why should be lower or not

10	equal or higher?	11:41:44
----	------------------	----------

11 MR. LEE: Asked and answered.

12 THE DEPONENT: I don't -- I don't have

13 another answer besides what I have said before.

14 0. (By Mr. Santacana) Is the data

15	worthless?	11:41:55
----	------------	----------

16 A. No, the data -- in my opinion, the data

17 would not be worthless.

18 Q. Is the seller in question more willing

19 than the Ipsos participants?

20	A. No, they are not.	11:42:07
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21 0. Were the sellers in question aware of the

22	data being taken?
----	-------------------

23 A. My understanding is that they're not

24 aware of it being taken -- that it was taken.

25	0. Can you name any factor that would weigh	11:42:20
----	---	----------

1 in favor of lowering the Ipsos payment in this 11:42:23
2 case?

3 MR. LEE: Objection. Mischaracterizes
4 Ipsos.

5 THE DEPONENT: Yeah, I don't -- I don't 11:42:33
6 think I'm lowering the Ipsos payment. It is \$3 --
7 it is \$3 per device. And, in fact, you can get \$3
8 per device per month.

9 But I think that that's an appropriate
10 amount, a conservative amount, for this case. 11:42:45

11 Q. (By Mr. Santacana) You said earlier that
12 a participant in Ipsos would get more money for
13 data than a class member in this case. You are
14 setting a conservative floor of \$3 one time, not \$3
15 every month, right? 11:43:01

16 A. That is how the calculation works. That
17 is correct.

18 Q. Okay. Can you name any factor that went
19 into your calculation that weighed in favor of
20 lowering the total amount of money the class 11:43:14
21 members would receive as compared to the
22 participants in the Ipsos study?

23 A. At the end of the day, I -- the -- the
24 factor that I considered, we've talked about
25 already, which is, in the Ipsos study, they're 11:43:37

1 collecting data every single month based on the app 11:43:42
2 tracker that is -- the tracker that is put on their
3 phone.

4 [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

10 MR. SANTACANA: Okay. Let's take a 11:44:28
11 break.

12 (Discussion off the stenographic record.)

13 THE VIDEOGRAPHER: This marks the end of
14 the Media No. 1. Going off the record. The time
15 is 11:44. 11:44:38

16 (Recess taken.)

17 THE VIDEOGRAPHER: This marks the
18 beginning of Media No. 2 in the deposition of
19 Michael Lasinski. We're back on record. The time
20 is 12:04. 12:05:05

21 Q. (By Mr. Santacana) Mr. Lasinski, I want
22 to talk about the WAA control for a moment.

23 What is -- and actually, really, the sWAA
24 control.

25 What are the WAA and sWAA controls, as 12:05:27

1 you understand them? 12:05:29

2 A. I talk about this in my report on.

3 Q. Where are you reading from?

4 A. In Section 6.

5 WAA relates to Web -- Web and app 12:05:59

6 activity. And that is a Google setting or activity

7 control related to Google's collection and saving

8 of the user's activity on Google sites and apps.

9 Do you want me to go future than that

10 and -- 12:06:16

11 Q. No. I can read the report.

12 A. Okay.

13 And then sWAA, I understand, is

14 supplemental Web and app activity. And that will

15 allow the collection of information on sites and 12:06:29

16 apps that partner with Google and show ads for

17 sites and apps that use Google services, including

18 data that apps share with Google: Chrome browsing

19 history, diagnostics, battery level, and that type

20 of thing. 12:06:56

21 Q. Did you write your report?

22 A. Yes.

23 Q. Every word?

24 A. I had sections that my staff wrote, but

25 then I relooked at every single word and would have 12:07:06

1 edited it if I thought -- if I thought it needed to 12:07:08
2 be edited.

3 Q. How many time did you spend writing it?

4 A. 40 hours or so.

5 Q. How much time did you spend reviewing 12:07:21
6 documents in the case?

7 A. I mean, it's really -- that's really hard
8 to say, because the whole case is about the
9 documents. So when I'm writing my report, I'm also
10 reviewing documents and stuff like that, so... 12:07:39

11 Of about 200 hours I've spent on this
12 case, probably 120 I was looking at documents, or
13 maybe more.

14 Q. Okay. Do you have an opinion as to
15 whether Google has invaded user privacy in this 12:07:57
16 case?

17 A. I --

18 Q. Let me withdraw the question and ask it a
19 different way.

20 A. Yeah. 12:08:21

21 Q. You're not rendering an expert opinion
22 here that Google has misled users, are you?

23 A. No. My -- my opinion -- my opinion is
24 that liability is found in this case, and if -- if
25 liability is found, then my damages are at issue. 12:08:39

1 So I -- I don't have an opinion one way 12:08:46
2 or another whether or not liability will be found.
3 But if liability is found, that's when my opinions,
4 I understand, come into play.

5 Q. Okay. And just to make it crystal clear, 12:08:58
6 you're not opining as to whether liability should
7 be found either?

8 A. I am not.

9 Q. In your report, you discuss contemporary
10 analogous financial analyses that you consulted in 12:09:24
11 formulating your opinions relating to unjust
12 enrichment.

13 What did you do to validate whether those
14 analyses were sufficiently analogous to be relied
15 on in this case? 12:09:46

16 A. I think you are talking about the, for
17 example, [REDACTED]

[REDACTED]
[REDACTED], [REDACTED]
[REDACTED].

20 Q. I am. 12:10:33

21 A. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

12:10:58

1 And I looked at -- I looked at that 12:11:03
2 information that they relied upon. I considered
3 the information that they relied upon. I
4 considered the fact that those analyses were
5 considered by multiple people within Google and 12:11:24
6 used to provide estimates for business purposes
7 within Google.

8 Q. Anything else?

9 A. I -- to be -- to be clear, I used certain
10 inputs from those documents. I don't use those 12:11:49
11 document in -- or -- or analyses in whole. I use
12 them in part.

13 And so in my calculations, I'm most
14 interested in certain aspects of those documents,
15 because I also rely upon documents that were 12:12:06
16 provided in this case in -- in the form of
17 financial -- financial data as well.

18 Q. Would you agree with me that, in order to
19 rely on the parts of those documents that you did
20 rely on, you would first need to be sure that the 12:12:34
21 methodology used to arrive at the numbers in those
22 documents was sound?

23 A. In part yes and in part no.

24 Q. Explain.

25 A. Well, so, again, I'm not using the 12:13:01

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1 documents in whole. So to the extent that there's 12:13:04
2 a methodology that's part -- that's not something
3 that I'm using or relying upon, I'm not as worried
4 about that piece of the document.

5 As far as the -- the overall methodology 12:13:19
6 being reliable, those parts that I use I believe
7 are -- are reliable and I understand to be reliable
8 based on my review of the documents.

9 Q. Would you also agree with me that parts
10 that you did rely on would need to be analogous to 12:13:41
11 what you're analyzing here in order to rely on
12 them?

13 A. I don't really know what you mean by
14 "analogous."

15 I would say that they need to be 12:13:58
16 appropriate to rely upon, and that's what they are.

17 Q. Okay. Well, we can take them piece by
18 piece.

19 Let's start with paragraph 72.

20 A. Okay. 12:14:23

21 Q. And here, as you said, you identify some
22 analyses, including the [REDACTED], the

23 [REDACTED] --

24 A. Yes.

25 Q. -- a ChromeGuard study? 12:14:37

[illegible]

[illegible]

1945: End of World War II

1949: Establishment of the People's Republic of China

1954: First Sino-Soviet Treaty of Friendship and Alliance

1957: Launch of the Great Leap Forward

1966: Start of the Cultural Revolution

1971: China's admission to the United Nations

1976: Death of Mao Zedong

1978: Start of Reform and Opening Up

1982: Adoption of the Constitution

1989: Tiananmen Square protests and massacre

1990: End of the Cold War

15 But the second half of my answer is, my 12:20:55
16 understanding is that sWAA -- my understanding is
17 that Google has represented that sWAA-off users do
18 not receive personalized ads.

19 And so in calculating my unjust
20 enrichment, I looked at -- what I was looking for 12:21:18
21 there was the relationship between personalized and
22 unpersonalized ads. [REDACTED]

■	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	

4 I think I said that correctly.

5 Q. (By Mr. Santacana) Your starting point 12:22:13

6 for your unjust enrichment analysis was that sWAA
7 users did not receive personalized ads? Excuse me.
8 Let me -- strike that.

9 Your starting point for your unjust
10 enrichment analysis was that sWAA-off users did not 12:22:32
11 receive personalized ads? Or was your starting
12 point that they did but should not have?

13 A. No. My starting point for Scenario 2,
14 because this only impacts Scenario 2, is that they
15 did not receive personalized ads -- I'm sorry. 12:22:52
16 Yes. That they -- my understanding is they do not
17 receive personalized ads.

18 To the extent that they did receive
19 personalized ads and those were inappropriate, then
20 my calculations would be -- would be conservative. 12:23:09
21 I would have calculated too little unjust
22 enrichment.

23 And just to be clear, I think we're
24 talking about sWAA-off users here.

25 Q. We are. 12:23:28

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1 In -- you said that was for Scenario 2. 12:23:33

2 For Scenario 1, did you assume that

3 sWAA-off users received personalized ads from

4 sWAA-off data?

5 A. No. 12:23:49

6 Q. So for neither scenario did you assume

7 that sWAA-off users were receiving personalized ads

8 that relied on sWAA-off data?

9 A. Correct.

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 Q. I think I understand.

8 So in -- you're trying to measure, in
9 Scenario 2 of your unjust enrichment opinion, if,
10 in the but-for world, Google could not serve ads to 12:28:17
11 SWAA-off users at all, what is the value to Google
12 of nonpersonalized advertising?

13 That's what you were trying to determine?

14 A. That's what I determined for -- for
15 those -- for -- for that scenario. 12:28:42

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6 Q. So let's stick with Scenario 2 for a
7 moment.

8 I'm looking at the paragraph 116.

9 MR. LEE: Paragraph 116.

10 THE DEPONENT: Okay.

12:30:06

11 Q. (By Mr. Santacana) So just so I
12 understand, 116 means -- paragraph 116 means that

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:31:14

1 Q. So I'm looking at Figure 38 and, I guess, 12:31:16
2 paragraph 121.

3 A. Yes.

4 Q. Actually, let's back up for a moment to
5 120. 12:31:36

6 So let me know when you've read it.

7 A. 120?

8 Q. Uh-huh.

9 MR. LEE: I think there's a figure on the
10 next page, Mike. 12:32:02

11 THE DEPONENT: Uh-huh.

12 MR. LEE: Yeah.

13 Q. (By Mr. Santacana) So at the end of it,
14 you say [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

19 Do you see that?

20 A. Yes. 12:33:00

21 Q. And Figure 37 summarizes that and bolds
22 the "[REDACTED]" row.

23 A. Yes.

24 Q. So as I understand it, what you
25 understood from the [REDACTED], in part, 12:33:11

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1 was that [REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
4 I think I said that wrong.
5 MR. LEE: Yeah. 12:33:32
6 Q. (By Mr. Santacana) The way you
7 understood it was that the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
11 A. Yes. 12:33:55
12 Q. And then in 121, you say you applied that
13 [REDACTED]
[REDACTED]
[REDACTED] 12:34:18
16 And that is where I get confused.
17 Why are you measuring [REDACTED]
[REDACTED]
19 A. Okay. So if -- [REDACTED] I'm
20 trying -- I'm trying to explain this the best way I 12:34:43
21 can, and I think -- I think I understood your
22 question.
23 Q. Okay.
24 [REDACTED]
[REDACTED] 12:34:53

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 My job in this matter is to calculate
8 what -- my job in this matter is to calculate what
9 Google's unjust enrichment is in Scenario 2.

10 That job requires, in Scenario 2, for me 12:35:27
11 to figure out what the value of the ads were that
12 they served, meaning that Google served, when sWAA
13 was off, because the assumption is that if sWAA
14 were off under Scenario 2, they could serve no ad.

A horizontal bar chart with 15 rows. The y-axis on the left is labeled '15' at the top. Each row contains a black bar of varying length. The bars represent the number of people in each age group. The lengths of the bars vary, with some being significantly longer than others. The bars are arranged in descending order of length from top to bottom. The longest bar is in the 10th row, and the shortest is in the 15th row. The bars are black and set against a white background.

Age Group	Number of People
15	10
14	10
13	10
12	10
11	10
10	15
9	10
8	10
7	10
6	10
5	10
4	10
3	10
2	10
1	10

1 Q. That is very helpful. I understand now. 12:36:43

2 So looking at Figure 38, by this point in

3 your report, [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

10 A. Correct. 12:37:27

11 Q. Did I get that right?

12 A. Yes.

13 Q. And then you reduced that --

14 A. Wait.

15 MR. LEE: Wait. 12:37:32

16 THE DEPONENT: I just want make sure.

17 Are you talking about -- you're talking about the

18 first line of -- okay. Yeah. That's where I'm at.

19 ■ [REDACTED] [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

22 MR. LEE: Where are you -- I'm sorry. I

23 don't know where you're indicating, Eduardo.

■ [REDACTED] [REDACTED]

■ [REDACTED]

12:38:01

1 MR. LEE: Okay. That second line. Got 12:38:01

2	it.
---	-----

--	--	--	--

[illegible]

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

18 Q. Okay. That is very, very helpful. Thank

19	you.
----	------

20 So coming back to the -- as you said, the 12:38:48

21 job on Scenario 2, [REDACTED]

[REDACTED] [REDACTED]

[illegible]

ATTORNEYS EYES ONLY

```
6         If you go to Figure -- I'm sorry; not
7         figure -- schedule 53.
```

8 Q. I'm there.

9	A. Okay.
---	----------

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[illegible]

2 Q. Got it. Okay. I understand.

3 So we've been talking about Scenario 2
4 because we were talking about the assumption that
5 Google did not use sWAA-off data to serve
6 personalized ads.

12:48:21

7 Do you recall that back-and-forth?

8 A. I do recall that. My understanding is
9 that it's not an assumption. That it, in fact,
10 is --

12:48:35

11 Q. Sure.

12 A. -- Google -- Google has -- Google has
13 informed us that that is the case.

14 Q. And I'm not disputing that that's true.
15 I just meant it's one of the assumptions of your
16 model. That's all.

12:48:45

17 A. Okay.

18 Q. With respect to Scenario 1, does that
19 assumption play any role?

20 A. No. I -- I mean, I do not have to create
21 a deduct for that in that case.

12:49:03

22 Q. Okay. And I think I understand why, but
23 we'll come back to that.

24 So now stepping back to your unjust
25 enrichment opinion more generally, you opine at

12:49:19

1 paragraph 71 -- 12:49:25

2 A. Could you hold on for one second?

3 Q. Sure.

4 A. Yes.

5 Q. -- that "the most appropriate and 12:49:39

6 reliable bases for quantifying Google's unjust

7 enrichment from the alleged wrongful conduct are"

8 essentially Google's income statements for App

9 Promo and AdMob, the financial analyses, and then

10 you say -- actually, just strike the question. 12:50:03

11 Let me instead focus your attention on

12 paragraph 73, where there are two bullet points.

13 A. Okay.

14 Q. These two bullet points correspond to

15 Scenarios 1 and 2. 12:50:33

16 A. I need a second to read it.

17 Q. Sure.

18 A. Okay. Yes, I do.

19 Q. They do correspond?

20 A. To -- yeah. One is Scenario 1, and one 12:51:05

21 is Scenario 2.

22 Q. Okay. So how did you arrive at this

23 method of calculating unjust enrichment by Google

24 from SWAA-off data as opposed to any other method?

25 A. Wait. Are you -- are you talking about 12:51:50

1 the Scenario 1 now, or Scenario 2 or... 12:51:52

2 Q. Well, both scenarios are attempting to
3 measure -- I believe they are attempting to measure
4 profits that Google earned from sWAA-off data?

5 A. From the use of sWAA-off data, yes. 12:52:09

6 Q. And I assume the -- the assumption behind
7 that is that Google, had it not been able to use
8 the sWAA-off data, would not have made these
9 profits, right?

10 A. Correct. 12:52:21

11 Q. Did you take into consideration how
12 Google's behavior would change in the but-for world
13 if it could not have used sWAA-off data in your
14 scenarios?

15 A. I -- so two answers to that. 12:53:41

16 One is, my understanding is, in
17 calculating unjust enrichment, they did not make
18 any changes in their behavior. They, in fact,
19 continued to use the sWAA-off -- the sWAA-off data.

20 To the extent that they would have been 12:54:02
21 able to make a change, I'm not aware of any change
22 that they would have been able to make that would
23 have resulted in less profits to them.

24 Q. Less profits or more profits?

25 A. Well, I'm calculating unjust enrichment. 12:54:25

1 So if they -- if they were to have made less 12:54:26
2 profits, I would have had to deduct less here.
3 Q. Okay.
4 A. Maybe we should -- maybe we should
5 reframe the question, because -- 12:54:43
6 MR. LEE: Yeah.
7 THE DEPONENT: Maybe I'm -- maybe I'm
8 answering the wrong question there.
9 MR. LEE: I think you guys are talking
10 about two slightly different things. 12:54:50
11 Q. (By Mr. Santacana) So I understand that
12 your unjust enrichment opinion is effectively a
13 disgorgement of profits opinion, right?
14 A. That is correct.
15 Q. Okay. Does it take into account at all 12:54:59
16 what would have happened in the but-for world if,
17 at the start of the class period, Google had been
18 prohibited from using SWAA-off data for the
19 purposes that you find to be sources of profit?
20 A. I'm not -- so that is something I 12:55:38
21 considered. I'm not aware of anything that they
22 would have done -- that they did do or would have
23 done differently if they had been prohibited from
24 using that data.
25 So I'm not aware of any alternative, if 12:55:55

1 you will, that was available to Google. 12:55:57

2 Q. You've done consumer products damages
3 cases before?

4 A. I have done damages cases where there
5 were consumer products involved. 12:56:09

6 Q. So in, let's say -- let's just take the
7 hypothetical that you are working on an all-natural
8 juice consumer fraud case. The juice says on the
9 label it's all natural. Turns out it's not. You
10 are measuring the damages. Right? 12:56:27

11 Have you done anything like that?

12 A. No, I have not.

13 Q. Okay. So not any -- you haven't done,
14 like, consumer fraud cases?

15 A. Correct. 12:56:36

16 Q. Okay. Are you familiar with the
17 methodologies that go into account in measuring the
18 difference between what the defendant gained in
19 profit from a false representation and what it
20 would have gained in the but-for world had the 12:56:47
21 false representation been, instead, accurate?

22 A. I have a familiarity with it, but I'm
23 not -- I have not done one of those cases.

24 Q. Okay. Did you consider anywhere in your
25 opinion in this case the difference between what 12:57:09

1 Google would have gained in profit -- excuse me. 12:57:13

2 Let's start over.

3 Did you consider anywhere in your opinion
4 in this case the difference between what Google
5 earned in profit from the allegedly false 12:57:23

6 representation relating to SWAA and what it would
7 have earned in a but-for world had Google not made
8 the false representation or made the representation
9 accurate?

10 MR. LEE: Objection to form. Misstates 12:57:41
11 the claim in the case, the legal issues in the case
12 and the methodology of the report.

13 THE DEPONENT: I guess you're going to
14 have to reask that in a different way. I'm not
15 quite understanding. 12:57:54

16 Q. (By Mr. Santacana) You understand the
17 claim in the case is that the plaintiffs understand
18 one thing from the SWAA button, but, in fact, it is
19 alleged Google did another thing that deviates from
20 their understanding, right? 12:58:07

21 A. Correct.

22 Q. And you are trying to measure the damage,
23 in your unjust enrichment opinion at least, that
24 the -- you're trying to measure the profits that
25 Google gained thanks to its alleged misleading of 12:58:17

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1 those plaintiffs? 12:58:21

2 MR. LEE: Objection to form.

3 Mischaracterizes the claim.

4 THE DEPONENT: I think you're

5 generally -- that's generally somewhat accurate, 12:58:30

6 yes.

7 Q. (By Mr. Santacana) And to measure that,

8 you tried to measure the profits that Google earned

9 from its use of the data it got thanks to the

10 alleged misrepresentation, right? 12:58:43

11 A. That is correct.

12 Q. And the assumption baked into that

13 opinion that you have rendered is that had Google

14 not made the alleged misrepresentation but instead

15 told the truth, then it would not have been able to 12:58:57

16 use the data in question to earn a profit, right?

17 A. Yes.

18 Q. Did you ever consider that if Google had

19 not made the alleged misrepresentation but instead

20 told truth that it still would have been able to 12:59:10

21 use the data because the user may have turned, for

22 example, WAA on?

23 MR. LEE: Same objections.

24 Mischaracterizes the claim and the methodology.

25 Q. (By Mr. Santacana) Let me ask it a 12:59:42

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1 different way. I'll withdraw the question. 12:59:44

2 Why did you assume that if Google had
3 disclosed to users at the start of the class period
4 that even when they turned sWAA off, it will still
5 use sWAA-off data to serve ads and measure 01:00:08
6 conversions, that the consequence of that would be
7 that Google would simply not receive the sWAA-off
8 data?

9 The user will still see ads, right?

10 A. My understanding is that the user might 01:00:36
11 still see ads.

12 Q. The user will still buy stuff sometimes,
13 right?

14 A. That's true. But, for example, like in
15 Scenario 2, they wouldn't be seeing Google Ads 01:00:46
16 because Google wouldn't know to serve them.

17 Q. What do you mean "Google wouldn't know to
18 serve them"?

19 A. Well, there would be -- my understanding,
20 for example, in Scenario 2 is there would be no ad 01:00:59
21 requests that Google would -- would receive.

22 Now, this is -- this is tech -- this is a
23 technical area. I'm not -- I'm not 100 percent
24 sure on the exact right terminology.

25 But my understanding is that under 01:01:12

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1 Scenario 2, which I think is an example that is 01:01:16
2 illustrative to what you are asking me, is Google
3 would not receive a signal to serve an ad, and so
4 they would not know to serve an ad.

5 So if an ad were to be on that page, you 01:01:34
6 said -- you said that they would just see an ad.
7 If -- if that -- that would have to come from some
8 different source.

9 Q. Couldn't Google just serve a randomly
10 selected ad? 01:01:48

11 A. No.

12 Q. Why not?

13 A. Because Google wouldn't receive a signal
14 to put an ad out in the first place.

15 Q. Why? 01:01:56

16 A. Because it wouldn't get the data.

17 Q. What data?

18 A. I -- you're asking me a technical
19 question now at this point, where I -- I don't know
20 technically what data that it needs to get to serve 01:02:08
21 an ad.

22 My understanding is that it wouldn't
23 receive that signal, so Google would not serve an
24 ad.

25 Q. I see. 01:02:19

1 A. Someone else would have to serve that ad. 01:02:20

2 Or maybe it was just an ad that's just always on

3 that page, always on that app.

4 One thing is -- for me, it's like

5 4:00 o'clock. So I don't know if we could take a 01:02:31

6 lunch -- I know we've been going about an hour.

7 MR. SANTACANA: Of course.

8 THE DEPONENT: I don't want to take a

9 super long lunch break, but --

10 MR. SANTACANA: Yeah. Can I just ask one 01:02:38

11 or two more questions? And then, yeah, we should

12 take lunch.

13 THE DEPONENT: Sure.

14 MR. SANTACANA: It should be here.

15 MR. LEE: I think it's already here. 01:02:45

16 MR. SANTACANA: Okay.

17 MR. LEE: It was up there when we got up

18 there.

19 MR. SANTACANA: Oh, good.

20 Q. (By Mr. Santacana) So I think I 01:02:50

21 understand.

22 In rendering your unjust enrichment

23 opinion, one of the assumptions that you made was

24 that, for Scenario 2 at least, I guess, it would be

25 technologically infeasible for Google to serve ads 01:03:12

1 to apps on devices where the user had sWAA turned 01:03:15
2 off.

3 Is that fair to say?

4 A. That is my understanding.

5 Q. So no part of your opinion takes into 01:03:26
6 account the possibility that Google could serve ads
7 by some technological means that do not engage in
8 the alleged unlawful conduct?

9 A. That -- that's my understanding, that --
10 that under Scenario 2, under that Scenario 2, they 01:03:47
11 would not be able to.

12 Q. And Scenario 1, I think?

13 A. Well, under -- under Scenario 1, it's
14 conversion -- that Scenario 1 relates to conversion
15 tracking. So they wouldn't get the conversion 01:04:03
16 tracking data, so they wouldn't have the ability to
17 conversion track the way they do.

18 Q. Let's say that we live in that but-for
19 world, where Google cannot receive the sWAA-off
20 data at issue in the case. 01:04:22

21 Couldn't Google still serve golf club
22 related ads in the PGA's mobile app without
23 receiving any sWAA-off data about the user who is
24 using it?

25 A. So my understanding in Scenario -- this 01:04:50

1 relates -- what you're now talking about is 01:04:52
2 Scenario 2, because you're talking about the actual
3 serving of an ad, not the conversion tracking
4 data --
5 Q. Okay. 01:05:00
6 A. -- that is related.
7 Q. I will accept that for now.
8 A. In -- in Scenario 2, no, it would not be
9 able to serve that ad.
10 Q. Why not? 01:05:07
11 A. Because it would not be technologically
12 feasible to do that. It would not get -- you're --
13 you're asking me a technical question why it would
14 not be able to. I'm not 100 percent sure of the
15 exact technical terms. 01:05:19
16 But my understanding is that it would not
17 get the signal -- nontechnical -- to serve the ad
18 in the first place.
19 Q. I'm almost done, and we'll take lunch.
20 But I just want to make sure I understand you. 01:05:31
21 Take a look at your report -- I just need
22 a moment to find it.
23 Paragraph 41.
24 MR. LEE: Just let me get there. Hold
25 on. 01:06:18

1 THE DEPONENT: I'm at paragraph 41. 01:06:30

2 Q. (By Mr. Santacana) Okay. In paragraph
3 41, you describe the Web & App Activity, or WAA
4 setting, we've been discussing.

5 And you say that's a setting that's 01:06:44

6 "related to Google's collection and saving of a
7 user's 'activity on Google sites and apps,
8 including associated information like location, to
9 give users faster searches, better
10 recommendations,'" et cetera, et cetera. 01:06:58

11 And in paragraph 42, you describe sWAA,
12 which is similar but applies to activity on sites,
13 apps and devices that use Google services.

14 You with me so far?

15 A. I'm with you, yes. 01:07:17

16 Q. So what I'm trying to understand is, why
17 can't the PGA contract with Google to serve
18 golf-related ads in its app without Google ever
19 saving a user's activity data from apps that use
20 Google services? 01:07:38

21 Why didn't you consider that as a
22 possibility?

23 MR. LEE: I'm a little confused.

24 Are you -- are you representing that
25 that's -- or suggesting -- I don't -- I'm not 01:08:05

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1 trying to pin, but I just want -- is it a 01:08:07

2 hypothetical question you're asking? Or is it --

3 are you representing that that's what Google does?

4 MR. SANTACANA: I don't even understand

5 what you're asking me, but -- 01:08:16

6 MR. LEE: Can you ask the question again,

7 then? Because I just want to make sure whether to

8 object or not.

9 Q. (By Mr. Santacana) Do you understand my
10 question? 01:08:24

11 A. Not really. I'm trying to understand --

12 I mean, I think we're talking about technical

13 issues here, and I want to make that sure I'm

14 not --

15 Q. Yeah. Let's take it piece by piece. 01:08:32

16 You told me that you believe it would be

17 technologically infeasible for Google to serve golf

18 club ads in the PGA without using SWAA-off data,

19 right?

20 A. I -- 01:08:49

21 Q. Or at least that's an assumption of your
22 unjust enrichment?

23 A. That's -- that's an assumption that --

24 and I don't know how that works --

25 Q. So I'm trying -- 01:08:57

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1 A. -- from a technical perspective. 01:08:58

2 Q. I'm just trying to test that assumption a
3 little bit to see if you considered that it might
4 be more complicated than that.

5 For example, couldn't the PGA app ask 01:09:06
6 Google to serve golf club-related ads in its app
7 without ever involving a user's Web and app
8 activity sWAA-off data?

9 MR. LEE: And my question is, are you
10 suggesting that that is something that PGA does? 01:09:24

11 MR. SANTACANA: You can ask me during the
12 lunch.

13 Q. (By Mr. Santacana) Go ahead and answer
14 the question.

15 MR. LEE: Yeah, I object as improper 01:09:30
16 hypothetical. Lack of foundation.

17 THE DEPONENT: I guess -- from my
18 understanding for Scenario 2, I understand that
19 that would not be technologically feasible to do.

20 Q. (By Mr. Santacana) Let's say that the 01:09:49
21 Court rules that sWAA-off data is limited to data
22 about a user. Okay?

23 MR. LEE: Objection. Vague.

24 Q. (By Mr. Santacana) Are you with me so
25 far? 01:10:06

1 A. I'm with you. 01:10:07

2 Q. It does not include, for example, data
3 that PGA sends to Google about its own app so
4 Google can select PGA-related ads. That would be
5 outside scope. 01:10:18

6 A. Okay.

7 Q. In that scenario, would your unjust
8 enrichment Scenario 2 opinion need to be altered?

9 A. Not that I'm aware of as I sit here.
10 You're talking about a technical issue 01:10:40
11 that I'd have to -- I'd have to think about, and I
12 would also have to get technical input on. So I
13 don't know the answer to that.

14 MR. LEE: And I didn't have a chance to
15 object. Same objection. Improper hypothetical. 01:10:50
16 There's two in there.

17 Q. (By Mr. Santacana) Well, what I am
18 positing is that the Court rules that Google can
19 serve what's called contextual advertising, which
20 is ads that relate to the app in which the ad is 01:10:58
21 being served, basically, without ever using
22 sWAA-off data.

23 If you assume the Court rules that, then
24 doesn't your but-for world need to be take into
25 account that Google could have served such ads 01:11:14

1 during the class period? 01:11:16

2 A. If you're asking me to assume something
3 different than I understood, I would have to
4 analyze that. I cannot sit here and answer that as
5 I sit here. 01:11:28

6 MR. SANTACANA: Okay. We can take lunch.

7 THE VIDEOGRAPHER: This marks the end of
8 Media No. 2. Off the record. The time is 1:11.

9 (Recess taken.)

10 THE VIDEOGRAPHER: This marks the 01:11:44
11 beginning of Media No. 3 in the deposition of
12 Michael Lasinski. We are back on the record. The
13 time is 2:06.

14 Q. (By Mr. Santacana) Sir, when we left
15 off, we were talking about your unjust enrichment 02:06:57
16 opinion and the but-for world in which Google was
17 prohibited from using SWAA-off data to serve ads.

18 Do you recall that?

19 A. Yes.

20 Q. I want to just understand a little more 02:07:16
21 of that but-for scenario for a moment.

22 So as I understand what you're saying, in
23 that but-for world, the users who have SWAA off
24 would not be served any ads by Google in -- via
25 AdMob or Ad Manager, right? 02:07:35

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1 A. That is my understanding, yes. 02:07:38

2 Q. And I guess what I'm curious about is
3 what would happen, if that were the case, to the
4 money that advertisers were devoting to placing ads
5 on Google's Display Network if, as you say, Google 02:08:00
6 could not serve any ads to sWAA-off users.

7 MR. LEE: Calls for speculation. Lack of
8 foundation.

9 THE DEPONENT: I guess I'm not
10 understanding what you're -- what you're trying to 02:08:22
11 ask there.

12 Q. (By Mr. Santacana) I'll break it down.
13 So Google makes money from placing ads,
14 right?

15 A. In part, yes. 02:08:29

16 Q. That's what we talked about earlier.
17 So an advertiser pays Google and expects
18 that Google show ads to people in return, right?

19 A. That is their business model.

20 Q. So all of sudden now, Google says, "Sure 02:08:45
21 we'll show ads to people, but we won't show any to
22 sWAA-off users."

23 Right? Under your unjust enrichment
24 theory.

25 A. Well, my -- my understanding is that you 02:08:58

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```
1 | couldn't -- they would not be able to serve ads on 02:09:01
```

2 third-party app sites to sWAA-off users.

3	Q. Right.
---	-----------

4 So there's apps that have AdMob in them,

5 | right? 02:09:19

6 A. That is my understanding, yes.

7 Q. AdMob shows ads that Google serves,

8	right?
---	--------

9 A. That is my understanding.

10	Q. And then those ads were bought by some	02:09:25
----	---	----------

11 other advertiser who said, "Can you please place

12 these ads on your Display Network?"

13	Right?
----	--------

14 A. That is my understanding.

15	Q. So Google says, all of a sudden, "We'll	02:09:37
----	--	----------

16 still place your ads, but we can't place them in --

17 for any sWAA-off users. If the user is sWAA-off,

18 we can't show your ad to them."

19 Are you with me?

20 A. I understand what you're saying, yes. 02:09:55

21 Q. I think your opinion posits that the

22 advertiser would pay less than in a world where

23 | they thought the sWAA-off user was going to receive

24 ads; is that fair to say?

25	A. The advertiser would pay less because	02:10:14
----	--	----------

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1 they did not -- to Google. The advertiser would 02:10:16
2 pay less to Google because Google did not -- would
3 not serve an ad in those cases.

4 Q. But only to SWAA-off users. It would
5 still serve ads to SWAA-on users and signed-out 02:10:27
6 users, right?

7 A. That is -- whether -- whether or not it
8 did or it did not doesn't concern me, because I'm
9 only concerned with SWAA-off users. So what it
10 does outside of that -- 02:10:40

11 Q. Right.

12 A. -- that's its business.

13 Q. So why would the advertiser pay Google
14 less? Why wouldn't it pay Google the same amount
15 to place ads, and the ads would just be shown to a 02:10:51
16 different mix of people, namely, people who don't
17 have SWAA turned off?

18 MR. LEE: Calls for speculation. Lack of
19 foundation.

20 THE DEPONENT: They would -- they would 02:11:08
21 pay them less because those ads that are currently
22 being shown to SWAA-off users would not be shown to
23 SWAA-off users. They may go to a different
24 advertising firm or a different -- different
25 company that could serve those ads, but they 02:11:25

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1 wouldn't go to Google. Google would not be able to 02:11:28
2 serve those ads.

3 Q. (By Mr. Santacana) So remember when we
4 were talking about the automated bid process?

5 A. I do. 02:11:40

6 Q. And you said the advertiser sets a bid.
7 Then there's a competition for whose ad gets shown
8 to people. You're not an expert in that, but
9 somehow that bid gets translated into the delivery
10 of advertising, right? 02:11:53

11 A. That is my understanding.

12 Q. So if the advertiser is engaging in the
13 automated bidding process on Google's website,
14 right, they have gone into the portal to do that,
15 and there's a message there that says, "Hey, 02:12:09
16 Advertiser, just take into account when you make
17 your bid, your ads will only be shown to SWAA-on
18 and signed-out users. If the user is SWAA-off, I
19 will not show them your ad."

20 Okay? 02:12:25

21 A. Yes.

22 Q. That -- that would -- because that would
23 be addressing -- that is your unjust enrichment
24 but-for world, right?

25 A. It -- 02:12:33

1 MR. LEE: Hold on. 02:12:34

2 Objection. Improper hypothetical. Calls
3 for speculation. Lack of foundation.

4 Go ahead.

5 THE DEPONENT: If -- if you are asking if 02:12:43

6 my but-for world in the case of the Scenario 2 is
7 that Google would not serve ads to SWAA-off users
8 as it relates to AdMob and Ad Manager, that portion
9 is accurate.

10 Q. (By Mr. Santacana) Okay. 02:13:01

11 So Google tells the advertiser that. Is
12 it your opinion that the advertiser's response is
13 to lower their bid amount rather than to simply
14 accept that their ads won't be shown to SWAA-off
15 users but can still be shown to other users?

16 MR. LEE: Same objections.

17 THE DEPONENT: My -- my assumption is not
18 that it would necessarily lower its bids in other
19 situations. But in a situation where there's a
20 SWAA-off user, then they don't get a signal that 02:13:38
21 they would certainly serve less ads.

22 Q. (By Mr. Santacana) So are you positing
23 that advertisers are bidding per ad? They are
24 saying, "To this user, show this ad; to that user,
25 show that ad"? 02:14:11

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1 A. No. 02:14:12

2 Q. Okay. So you understand that the
3 advertiser's saying to Google, "Here's a bucket of
4 money; here's what I want to do with it." Right?

5 A. I do understand that. 02:14:19

6 Q. And there's lots of different ways they
7 can prioritize. They can say, "I want to
8 prioritize cost per click; I want you to prioritize
9 cost per impression; I want you to prioritize
10 conversions." Right? 02:14:27

11 A. Yes. That's -- I mean, but that's my
12 understanding is they have the options available to
13 them.

14 Q. Okay. So Nike is on Google's website.
15 They're going to place some ads in apps. They want 02:14:38
16 ads to go across Google's Display Network. And
17 they say, "My budget is \$5,000 for this ad
18 campaign, and I want to prioritize impressions."

19 Okay. With me?

20 A. I'm with you. 02:14:56

21 Q. Google says, "That sounds good. I'm
22 going to place the ads for you. Just so you know,
23 when I place them, no sWAA-off users will see this
24 ad campaign."

25 Okay? 02:15:09

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1 A. I understand what you're saying. 02:15:09

2 Q. Is it your opinion that Nike would reduce
3 the \$5,000 budget at that point?

4 MR. LEE: Same objections.

5 Go ahead. 02:15:22

6 THE DEPONENT: I would not -- I don't
7 know that it would be a one by each advertiser. I
8 didn't look at it by -- on advertiser by
9 advertiser.

10 But certainly, if Nike had the ability to 02:15:32

11 place less ads, and Nike had -- I'm sorry; Nike --

12 Google had the ability to place less ads and were

13 to go to its advertisers and tell them you

14 cannot -- I can't serve ads to SWAA-off users, and

15 its -- it's a significant percentage of the number 02:15:54

16 of people that one would try to go to, yes, I do

17 think that there would be a lowering of the value

18 that Google receives.

19 Q. (By Mr. Santacana) Under your opinion,

20 there would have to be, right? Otherwise Google 02:16:18

21 would still make the same amount of revenue in that
22 scenario?

23 A. Under -- under my opinion, yes, they

24 do -- they do receive less revenue and -- and,

25 ultimately, less profits. 02:16:31

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1 Q. And the mechanism by which they receive 02:16:33
2 less revenue necessarily is that advertisers decide
3 to spend less money?

4 A. They do decide -- they do spend less
5 money, yes. 02:16:43

6 Q. Do you, in your report, analyze the
7 factors that those advertisers take into account in
8 the but-for world where they are deciding to spend
9 less money thanks to the SWAA-off data prohibition?

10 A. I do not do advertiser-by-advertiser 02:17:18
11 analysis in my report. I think it's -- I think,
12 based on the information available to me, my report
13 was -- is appropriate given the Scenario 2
14 assumptions that there would be less ads that would
15 be able to be served. 02:17:41

16 Q. Just so I'm clear, in Scenario 1, are you
17 saying the ads can still be served, but the
18 conversions cannot be measured; whereas Scenario 2,
19 you're saying the ads can't be served at all?

20 A. Yes. In Scenario 1, the ads -- the ads 02:18:10
21 can be -- the ads can be served.

22 Q. And so there, the source of profit that
23 you're disgorging is the successful measurement of
24 a conversion?

25 A. The -- what I'm actually -- the source of 02:18:31

1 value in that is actually Google's use of that 02:18:37
2 information, Google's use of conversion tracking
3 information, in its -- in its algorithms,
4 machine-learning algorithms.

5 Q. Sorry. What do you mean by that? 02:18:57

6 A. So my understanding is that when Google
7 tracks conversions, that -- that data goes into
8 their -- goes into their algorithms that they use
9 for, for example, autobidding. And then that data
10 is important for them to be able to make those 02:19:24
11 algorithms work.

12 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

17 Q. Okay. We'll come back to that.

18 But just sticking with what we were just
19 discussing, you assume, necessarily, that
20 advertisers would lower the amount of money that 02:20:13
21 they spend with Google in response to a prohibition
22 on the use of SWAA-off data, right?

23 A. I believe that that's accurate, yes.

24 Q. And the amount of money by which those
25 advertisers -- that's not a sentence. Let's try 02:20:35

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1 that again. 02:20:40

2 The difference that those advertisers
3 spend with Google, that drop in the amount of money
4 they're willing to spend, corresponds one-to-one
5 with the amount of revenue Google makes for the 02:20:55
6 service of sWAA-off user advertising, right?

7 A. For AdMob and for Ad Manager, that is
8 correct.

9 Q. All things being equal, your assumption
10 in your unjust enrichment Scenario 2 model is that, 02:21:21
11 in all, Google's revenue will drop by the amount
12 that it earns for serving ads to sWAA-off users
13 because advertisers will choose to spend in total
14 what they used to spend minus that amount?

15 A. Well, I mean, to be clear, that -- that 02:22:02
16 is accurate, but then also Google would save
17 [REDACTED] as well. So the
18 profits -- the profits are not equal to the
19 revenues in this case.

20 Q. Understood. Let's -- that's a very good 02:22:17
21 point, and we'll come back to costs later. So I'll
22 try and remember to stick to revenue for now --

23 A. Okay.

24 Q. -- in my questions.

25 So here's what I don't understand, then, 02:22:32

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1 about your assumptions behind Scenario 2. 02:22:34

2 If an advertiser wants to reach a certain
3 number of people or achieve a certain number of
4 conversions, why would they care whether Google
5 will show their ad to all users or all users except 02:22:49
6 sWAA-off users?

7 What difference does it make to the
8 advertiser such that they will lower their budget
9 by a corresponding amount?

10 A. Well, I mean, here's an example: If -- 02:23:13
11 if an advertiser knows that it's not going to -- to
12 reach a significant amount of people through
13 Google's ad network -- you know, we know in -- in
14 the most recent [REDACTED] [REDACTED]

[REDACTED] [REDACTED] p [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

17 If one went to -- went to that advertiser
18 and said, "We're not going to reach those people,"
19 it is very likely that they would reduce -- reduce
20 their spending and go to someone that could reach. 02:23:53
21 That's -- that could reach those people.

22 Q. Why?

23 A. Because they know. Because Google is now
24 telling them that our universe is incomplete.
25 Google is now telling them that we don't have 02:24:11

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1 complete data; we don't have -- we don't have 02:24:14
2 information on a significant portion of the -- of
3 the people that could be purchasers. We can't get
4 that information.

```
5           And so, therefore, you know, our model --           02:24:25
6     ultimately, our models are not as robust and they
7     once were.  Our reach is not as high as we have
8     explained it to be.
```

9 I think that those would have both
10 first-order -- I think the documents show that 02:24:47
11 those would have both first-order impacts and
12 second-order impacts. And first order relates to
13 advertising revenue, and second order relates to
14 their overall model being less efficient.

A horizontal bar chart with 15 rows. The y-axis is labeled '15' at the top. Each row contains a black bar of varying length. The bars represent the number of people in each age group. The bars are arranged in descending order of length from top to bottom. The first bar is the longest, and the last bar is the shortest. The bars are black and have a consistent height. The chart is set against a white background with a light gray grid.

Age Group	Number of People
15-19	15
20-24	14
25-29	13
30-34	12
35-39	11
40-44	10
45-49	9
50-54	8
55-59	7
60-64	6
65-69	5
70-74	4
75-79	3
80-84	2
85-89	1
90+	0

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[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED] █

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

Q. You do not know if those hypotheses were correct or not?

02:26:13

A. I don't -- I don't know for sure if they were correct or not. They seem like they would be

[REDACTED]

█ [REDACTED]

[REDACTED] █

[REDACTED]

█ [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

█ [REDACTED] █

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. We'll try and find the document.

02:27:15

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1 Unless you happen to know which one it is. 02:27:21

2 A. I don't. I mean, that's just one
3 document I can think of as I'm sitting here. There
4 may be others.

5 THE DEPONENT: One thing I'm just going 02:27:29
6 to mention before we -- it is getting --

7 MR. LEE: A little hot in here?

8 THE DEPONENT: It is going to get hot in
9 here if they turned up the heat too much. I'm the
10 one sitting in -- here in a tie, so... 02:27:38

11 (Discussion off the stenographic record.)

12 Q. (By Mr. Santacana) Okay. So back to the
13 advertiser in the but-for world who is being told
14 that some percentage of the audience will not be
15 reached by the ad campaign. 02:28:16

16 And you say the natural response, then,
17 is to lower the amount of money they are willing to
18 spend with Google and perhaps reallocate some money
19 to other advertising networks?

20 A. That -- that is one way of looking at it, 02:28:30
21 yes.

22 Q. Did you measure the amount of impact that
23 that disclosure would have on advertisers'
24 decisions on where to allocate their advertising
25 budgets? 02:28:50

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1 MR. LEE: What disclosure? 02:28:52

2 MR. SANTACANA: The disclosure by Google
3 to the advertiser that their ads will not reach
4 sWAA-off users.

5 MR. LEE: Okay. 02:29:01

6 Objection. Improper hypothetical. Calls
7 for speculation. Lack of foundation.

8 THE DEPONENT: I mean, I'm not aware of
9 any disclosure like that. I think -- I don't -- I
10 don't know that any disclosure like that was made. 02:29:16
11 So I'm -- I did not measure that.

12 Q. (By Mr. Santacana) So -- right.

13 What we're talking about is your but-for
14 world where Google is prohibited from serving ads
15 to sWAA-off users, right? 02:29:30

16 A. Well, that is -- that is the but-for
17 world for Scenario 2.

18 Q. And in that world --

19 A. And let's just be clear: sWAA-off users
20 on third-party apps. 02:29:41

21 Q. Yes.

22 And in that world, you posit that
23 advertisers' response to that prohibition will be
24 to lower their ad budget with Google because they
25 will understand that their ads will not reach the 02:29:56

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1 entire potential audience. SWAA-off users can't be 02:29:59
2 reached anymore, right?

3 A. That is right.

4 Q. Did you attempt to measure how much lower
5 the ad budgets would be in response to those 02:30:10
6 advertisers learning that they would not reach
7 SWAA-off users?

8 MR. LEE: Same objections. Improper
9 hypothetical. Calls for speculation. Lack of
10 foundation. 02:30:24

11 THE DEPONENT: Again, I'm not aware of
12 any -- you're -- you're asking me about a world in
13 which that could have happened. I gave you an
14 example. There may be others -- other examples in
15 which advertisers would have -- would have spent 02:30:35
16 less. That's just one example.

17 And so no, I did not attempt to -- to
18 measure that. I don't think I needed to, because I
19 think it's pretty clear that there would have been
20 less spending, and I quantified that as such. 02:30:52

21 Q. (By Mr. Santacana) Well, that's my
22 question.

23 You quantified it as such. How?

24 A. I -- exactly as I explained in my report.
25 There's going to be less ad requests, so then less 02:31:08

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1 of an ability to serve those ads, and, therefore, 02:31:11
2 advertisers would spend less.

3 Q. But the amount that you quantified it as
4 is the exact amount that Google has earned from
5 sWAA-off users. It assumes a one-for-one drop in 02:31:25
6 budget, right?

7 A. For -- for Scenario 2, yes.

8 Q. So in Scenario 2, an advertiser that
9 would have spent \$100 to reach the entire audience,
10 if they are told that 10 percent of the audience 02:31:45
11 won't be reached because they are sWAA-off, that
12 advertiser chooses to spend \$90 instead.

13 Is that a fair characterization?

14 A. I think that that is -- yeah, I think
15 that that's how the mechanics of it how would work. 02:32:04

16 Well, not -- not quite. Not quite.
17 Because that -- that only relates to the ad --
18 advertising percentage of it. They still would
19 get -- Google is still earning money on the
20 conversion element of it. 02:32:18

21 So I have to take it into consideration,
22 it's -- the conversion information. But for
23 Scenario 2, that is correct. That is accurate.

24 Q. So keeping just Scenario 2 in mind --

25 A. Correct. 02:32:32

1 Q. -- that's the scenario where Google can't 02:32:33
2 serve ads. They can still serve ads in Scenario 1?
3 A. That is my understanding, yes.
4 Q. Okay. So keeping Scenario 2 in mind,
5 Google can't serve ads, advertiser understands that 02:32:43
6 10 percent of their audience has been excluded from
7 the pool --
8 A. More than that.
9 Q. I'm just saying it's 10 -- let's say it's
10 10 percent for a round number. 02:32:53
11 A. Okay.
12 Q. The SWAA-off people are excluded from the
13 pool?
14 A. Yes.
15 Q. They lower their ad budget one for one by 02:32:58
16 the percentage of people who are excluded from the
17 pool? That's your opinion?
18 A. No, not one for one by the percentage
19 of -- not one for one by the people that were
20 excluded from the pool. That's not right. 02:33:12
21 Q. Okay. Why not?
22 A. Because what -- what it is, actually, is
23 it's those ads that were actually served to those
24 people -- those ads that were actually served to
25 those people, I'm actually lowering -- I'm actually 02:33:27

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1 looking at the actual unjust enrichment in that -- 02:33:32
2 in that case.
3 I'm actually looking at what they
4 actually earned, what was actually paid to them in
5 that case. 02:33:43
6 Q. Right.
7 A. And they -- in the but-for world, they
8 would not have been able to serve those ads.
9 They did serve those ads, so that's what
10 they actually earned. That's my -- that's the 02:33:56
11 calculation that I'm making.
12 Q. So, then, is it fair to say that you are
13 not trying to hypothesize how consumer and
14 advertiser and Google behavior would have changed
15 in the but-for world? Your task really was to 02:34:13
16 measure the exact amount of profits Google did make
17 from SWAA-off advertising?
18 A. Yes. So in the but-for world, Google
19 actually served those ads and actually profited
20 from the information that it collected. And 02:34:35
21 that's --
22 Q. In the real world?
23 A. In the real world, they did.
24 In the but-for world, they should have
25 not been able to. 02:34:43

1 And so in that world, they actually 02:34:44
2 earned that money, and I am calculating the amount
3 of profits that should have been disgorged.

4 That's the calculation. And maybe we
5 were talking past each other earlier, because 02:34:54
6 that's what I was telling you is what had happened.

7 Q. I think we were. So here's where I get
8 confused.

9 You've done IP cases, lots of them,
10 right? 02:35:06

11 A. Yes.

12 Q. And in those cases, sometimes you
13 calculate a reasonable royalty, right?

14 A. Correct.

15 Q. And you calculate disgorgement of 02:35:17
16 profits, right?

17 A. Correct.

18 Q. For example, in a patent case, where
19 infringement is found on a component of a laptop,
20 let's say the RAM chip, one calculation you might 02:35:28
21 do is how much profit would the laptop seller have
22 made if they could not have used that RAM chip as
23 designed?

24 A. Okay.

25 Q. Right? 02:35:44

1 A. Okay. I'm following your hypothetical. 02:35:44

2 Q. Have you done that kind of an analysis

3 before?

4 A. Yes.

5 Q. When you do that analysis, you start with 02:35:52

6 how much revenue the laptop seller made, right?

7 A. Correct.

8 Q. You deduct costs?

9 A. Correct.

10 Q. And you take into account how consumer 02:36:10

11 behavior would have changed in the but-for world

12 where the laptop seller could not use that RAM

13 chip, right?

14 A. Correct.

15 Q. And you take into account what the laptop 02:36:24

16 seller could have done to design around the claims

17 of the patent that were found to be infringed,

18 right?

19 MR. LEE: Objection. Lack of foundation.

20 THE DEPONENT: I understand. I'm 02:36:37

21 following your hypothetical.

22 Q. (By Mr. Santacana) Have you done that?

23 A. In cases?

24 MR. LEE: Objection.

25 Q. (By Mr. Santacana) Have you done an 02:36:42

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1 analysis like that before? 02:36:43

2 A. I mean, I'm -- I think I'm following it,
3 but I think -- I think what you're talking about is
4 the next-best alternative. But I'm not quite sure.

5 Q. In part, I am. Yes. 02:36:54

6 A. Okay.

7 Q. Did you take into account a next-best
8 alternative here, in this case?

9 A. Well, my understanding in this case is
10 that liability is based on what actually happened 02:37:05
11 in the real world versus what should have happened
12 in the but-for world.

13 And what actually happened in this world
14 was Google actually used the -- collected and used
15 the data. And in the but-for world, they should 02:37:22
16 not have done that.

17 Q. Just like an infringer actually sold
18 infringing products, and in the but-for world, they
19 should not have done that?

20 A. I don't know if I can make that analogy, 02:37:34
21 because I'm not a lawyer, and if it's just like the
22 same thing.

23 That's -- that's a different standard.

24 Q. I'm asking --

25 A. There's a different legal -- 02:37:43

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1 Q. -- perspective. 02:37:44

2 A. -- different legal cases.

3 Q. I'm asking from your perspective as a
4 damages expert who's done that countless times,
5 right, you've considered what happens when a 02:37:50
6 component of a product is infringing, right?

7 A. I have, yes.

8 Q. And when you do that analysis, you don't
9 only take into account the profits made on the
10 product that was sold and the costs involved in 02:38:06
11 making the infringing component. You also take
12 into account the possibility that the infringer
13 could have used a different component, right?

14 A. That's one mechanism. That's one way to
15 look at it, correct. 02:38:20

16 Q. So, for example, in the case, if Nike has
17 a \$100 budget, and Google says you are not going to
18 reach SWAA-off users through apps, Nike could
19 reallocate the budget to other Google advertising
20 properties, right? 02:38:31

21 MR. LEE: Calls for speculation.

22 THE DEPONENT: I think you're just --

23 MR. LEE: Hold on. Calls for
24 speculation. Lack of foundation. Improper
25 hypothetical. 02:38:40

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1 Go ahead. 02:38:40

2 THE DEPONENT: I mean, I think you're
3 asking me to just speculate on what they would do.
4 And I'm -- I didn't do that in my report. I'm not
5 here to do that. 02:38:47

6 Q. (By Mr. Santacana) Okay.

7 A. What I'm doing is calculating what the
8 actual but-for world would have been.

9 Q. Well, I don't -- but you're not, right?
10 Because you're not trying to -- to hypothesize how 02:38:57
11 the parties in the transaction would react to the
12 constraint that you're placing on the market, which
13 is Google cannot use SWAA-off data to serve ads.

14 You did not attempt to hypothesize, model
15 or otherwise study how the parties in the 02:39:14
16 transaction would react to that constraint, right?

17 A. My understanding -- my understanding is
18 the but-for world is actually -- Google actually
19 made a promise -- layman's terms -- made a promise,
20 did not live up to promise, and then actually used 02:39:34
21 the information and actually profited from that
22 information -- from that data.

23 And I calculated the profits that they
24 made from that data, you know, because I have
25 assumed that liability -- assumed that there's 02:39:46

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1 liability. 02:39:50

2 Q. You've assumed there's a liability, and
3 you've assumed that the parties to the advertising
4 transaction would not have changed their behavior
5 in response to the prohibition on the use of 02:40:03
6 sWAA-off data for advertising?

7 A. I mean, no. My understanding of the
8 but-for world is that they did profit from this
9 information.

10 And my job is calculate how they profited 02:40:19
11 from the information that they took in an
12 ill-gotten way, not to speculate on what they could
13 have done differently. And I'm not aware of
14 anything that they could have done differently.

15 Q. With respect to Scenario 2? 02:40:40

16 A. Correct. I mean, I think that that's
17 what we're talking about is Scenario 2.

18 Q. Yeah.

19 In effect, as I understand it, among
20 other things, you assume that the sWAA button was 02:41:00
21 meant to function as an ad blocker on Google's
22 AdMob and Ad Manager SDKs; is that fair to say?

23 A. No, I -- I have not assumed that.

24 Q. Well, you're saying that -- that you
25 assume that it's impossible for Google to serve ads 02:41:26

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1 through AdMob and Ad Manager when the user has sWAA 02:41:28
2 off, right?
3 A. For Scenario 2.
4 Q. Right?
5 A. Correct. 02:41:36
6 Q. So in effect, what you're saying is that
7 when the user turns sWAA off, it functions in part
8 like an ad blocker. If they use an app that uses
9 AdMob, where there might have been ad, now there's
10 none? 02:41:50
11 MR. LEE: Objection to form.
12 THE DEPONENT: No, I -- I don't agree
13 with that.
14 Q. (By Mr. Santacana) Why not?
15 A. Because I understand that Google would 02:42:04
16 not be able to serve an ad, but I'm not aware that
17 there wouldn't be some other way to -- to have an
18 ad served to them.
19 Q. I see. So the app developer could
20 integrate a different advertising platform and so 02:42:18
21 that for sWAA-off users, instead of showing a
22 Google ad, they show a Facebook ad?
23 A. I -- I'm not sure the mechanism for which
24 it would happen, but I have not assumed that they
25 would -- I have not assumed that they would -- that 02:42:32

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1 they've switched an ad blocker on. 02:42:37

2 I've assumed -- I've assumed that their
3 data is not available for Google to serve an ad in
4 Scenario 2.

5 Q. So it's not an ad blocker; it's a Google 02:42:49
6 ad blocker?

7 MR. LEE: Objection to form.

8 THE DEPONENT: My understanding is, based
9 on input given to me, is that Google would not be
10 able to serve an ad in those situations. 02:43:06

11 Whether or not you want to call it an ad
12 blocker, I've never called it that, but Google
13 would not be able to serve an ad in those
14 situations.

15 Q. (By Mr. Santacana) Okay. 02:43:19

16 Take a look at paragraph 87 of your
17 report.

18 A. Okay.

19 Q. And then 88, please.

20 A. Okay. 02:45:17

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

02:45:37

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1

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■

7

MR. LEE: Objection.

8

I don't understand the question.

9

Answer if you know.

10

THE DEPONENT: Well, I don't -- I

02:46:10

11

don't -- I, in fact, don't understand what you're

12

trying to ask me, because I think it's...

13

Q. (By Mr. Santacana) I just don't

14

understand the phrase. What does it mean?

15

A. Could you -- could you reask the

02:46:18

16

question, then?

17

Q. Yes. Let me see if I can find -- take a

18

look at paragraph 63.

19

A. Okay.

20

Q. So paragraph 63 is referring to Figure

02:46:59

21

15, right?

22

A. Paragraph -- no. Paragraph 63 is

23

referring to Schedule 15.1.

24

MR. LEE: I think he's referring to the

25

first phrase in the 63. You're right, but...

02:47:24

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1 Q. (By Mr. Santacana) It says -- 02:47:27

2 MR. LEE: You're focusing -- you're both
3 right.

4 Q. (By Mr. Santacana) Yeah. Not the
5 footnote. I'm just saying it starts "as indicated 02:47:30
6 in figure above," which I think means Figure 15?

7 A. I see. Yes. That is correct.

8 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

02:49:21

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23

24

25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. So in a moment, it should be

available to you on that device as Exhibit 2.

(Exhibit 2 was marked for identification

02:50:04

by the Court Reporter and is attached hereto.)

MR. SANTACANA: While we wait for it, I

want to clarify something else about that

paragraph 63.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Did I get that right?

A. Well, not -- no.

02:50:56

Q. No. Okay. Help me out.

[REDACTED]

[REDACTED]

[REDACTED]

Q. Period.

02:51:13

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4 Q. I see what you're saying. I see what
5 you're saying. Right.

15	Q. Fair enough.	02:52:23
----	-----------------	----------

16 THE DEPONENT: Nothing has popped up
17 here, by the way.

18 MR. LEE: Oh, you've got to hit the
19 "refresh" button. See that one right there? You
20 should get something.

21 THE DEPONENT: Okay.

22 MR. LEE: There's two things that popped
23 up, and one doesn't have an exhibit number. I
24 don't know if it's the same document or not.

1 MR. LEE: That was very hard to deal with 02:52:54
2 on the browser. So just take your time and make
3 sure you scroll all the way through. Sometimes
4 it's not always there.

5 THE DEPONENT: Okay. Okay. I've got it 02:53:30
6 open.

7 Q. (By Mr. Santacana) Great. Okay.

8

■

■

02:53:45

11 A. I think I have to point us to three.

12 Q. Sure.

■

■

■

■

■

■

■

■

■

■

23 A. I can't do this on this machine, I don't
24 think. But I'm pretty sure...

25 (Discussion off the stenographic record.) 02:54:52

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1 THE DEPONENT: As I'm clicking on these 02:54:54
2 cells, I'm not seeing what I normally see with my
3 Excel.

4 MR. LEE: Yeah. I think that's because
5 it's in browser instead of the file. 02:54:59

6 THE DEPONENT: But if you go to the
7 "Matrix" tab --
8 (Discussion off the stenographic record.)

9 MR. SANTACANA: I'm there.

10	A. Okay. So if you go to the -- the	02:55:25
11	"Matrix" tab, the first number that I'll point you	
12	to is B4 -- B43.	

02:56:26

1 MR. SANTACANA: Can we go off for a 02:56:36
2 second?

3 MR. LEE: Yeah.

4 THE VIDEOGRAPHER: This marks the end of
5 Media No. 3. Off the record. The time is 2:56. 02:56:39
6 (Recess taken.)

7 THE VIDEOGRAPHER: This marks the
8 beginning of Media No. 4 in the deposition of
9 Michael Lasinski. We're back on the record. The
10 time is 3:05. 03:06:11

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 03:07:39

6 Q. Okay. I got it. All right.

7 So you read Knittel's report?

8 MR. LEE: Asked and answered.

9 MR. SANTACANA: It's a segue.

10 THE DEPONENT: I did. I did. I did. 03:08:06

11 MR. LEE: I couldn't even keep a straight
12 face.

13 Go ahead.

14 THE DEPONENT: I did read Knittel's
15 report, yes. 03:08:12

16 Q. (By Mr. Santacana) You saw that one of
17 his criticisms of your analysis is that it did not
18 take into account the impact of iOS 14 and its
19 release in September of 2020.

20 Do you recall reading about that? 03:08:25

21 A. Yes, I do recall reading that about.

22 I don't agree with his conclusions, but I
23 do recall reading about that.

24 Q. Tell me why.

25 A. So, first of all, just from a very 03:08:47

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1 technical standpoint, I don't -- I understand that 03:08:50
2 iOS 14 actually was not where there was any sort
3 of -- this is a layperson's version of -- of the
4 technical discussion.

5 iOS 14 is not where there was an actual 03:09:10
6 change. I understand there was iOS14.5. So it --
7 so the -- the date that he -- he says things should
8 have changed, my understanding is it's actually
9 later than that date.

10 Q. Okay. 03:09:29

11 A. Then, secondly, I understand that Google
12 could have known what iOS 14.5 and beyond users
13 SWAA status was. There's technically a way that
14 they could have known that, technically a way that
15 Google could have known that. 03:09:59

16 So that's the second thing.

17 And it's --

18 Q. Go ahead.

19 A. Go ahead.

20 Q. Go ahead. Finish. 03:10:11

21 A. And then the third is, just because
22 Google, in -- in Knittel's world, if I understand
23 it correctly, he's saying Google could not know or
24 did not know the SWAA-off/SWAA-on status for iOS
25 14 and beyond. 03:10:43

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1 That, in my opinion, does not alleviate 03:10:44
2 Google's promise, if you will, to those that click
3 sWAA off. They shouldn't be able to just put
4 blinders on and say, oh, we couldn't know this
5 information; therefore, we have no -- we have no 03:11:09
6 duty to uphold someone's sWAA-off status.

7 Q. Okay. Well, I think you disclaimed
8 expressing any expert opinion, at least, in the
9 case about what Google or should or shouldn't do,
10 right? 03:11:30

11 A. That is correct.

12 Q. Okay. So let's stick to -- let's stick
13 to our hypotheticals and our assumptions and leave
14 what Google should and shouldn't do out of it for a
15 minute. 03:11:38

16 You said, as a technical matter, that
17 Google could still have known after iOS 14.5 the
18 sWAA status of its users who use iOS devices.

19 What is the basis for your understanding?

20 A. The basis of my understanding is that -- 03:11:54
21 through discussions with Mr. Hochman.

22 Q. When did you have those discussions?

23 A. That was after I reviewed Mr. Knittel's
24 report.

25 Q. Who was present for those discussions? 03:12:12

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1 A. I don't recall as I sit here. I know 03:12:17

2 Mr. Hochman and I were.

3 Q. Was there a lawyer?

4 A. Yes.

5 Q. Who? 03:12:23

6 A. Probably -- probably Alex.

7 Q. Frawley?

8 A. Frawley, probably.

9 Q. So what did Mr. Hochman tell you about

10 Google's ability to determine the SWAA status of 03:12:39

11 iOS users after iOS 14.5?

12 A. So my understanding is that there is a

13 device -- some way to do some device-level

14 information that Google could get that would enable

15 them to determine whether or not the SWAA-on or 03:12:58

16 SWAA-off statuses were on.

17 Q. Do you have any further understanding

18 other than what you just said?

19 A. No, it was -- it's technical. He -- he

20 said it's possible they could have known. 03:13:14

21 Q. Okay.

22 A. Meaning -- "they" meaning Google.

23 Q. Right. Understood.

24 Did you read the named plaintiffs'

25 depositions in this case? 03:13:39

1	A. I flipped through them. I didn't read	03:13:42
2	them word for word, but I did flip through at least	
3	some of them.	

4 Q. Would you agree that their own words is
5 at least a useful data point in how consumers value 03:13:54
6 their sWAA-off data?

7 A. I -- I don't believe that that's
8 necessarily probative, but I would have no reason
9 to believe that it isn't something that one could
10 look to. 03:14:28

11 Q. Did you do anything in this case to
12 model, estimate or study how consumers would have
13 responded at the start of the class period if
14 Google had fully disclosed what Plaintiffs alleged
15 it failed to disclose about sWAA? 03:14:57

16 A. I did not do a consumer study, if that's
17 what you're asking. My understanding is -- from my
18 job from a monetary -- from a monetary compensation
19 standpoint is I have accepted the premise that
20 Google didn't do that. 03:15:22

21 Q. So have you done anything to analyze, as
22 an expert, what would have happened in the but-for
23 world if Google had disclosed that sWAA off would
24 work the way that it works according to
25 Mr. Hochman?

03:15:51

1 MR. LEE: Objection. Form. Vague. 03:15:53

2 THE DEPONENT: I -- I did not do any. I
3 did not do an analysis of that sort, if that's what
4 you're asking me.

5 Q. (By Mr. Santacana) Okay. 03:16:20

6 A. I did not.

7 Q. Okay.

8 Returning to iOS 14 for a moment,
9 assume for me that Google cannot decipher the sWAA
10 status of a user on an iOS device who does not 03:17:12
11 consent to it.

12 Okay?

13 A. Well, can you repeat that? Because now
14 I've lost you.

15 Q. Assume that Google cannot decipher the 03:17:22
16 sWAA status of a user on an iOS device who does not
17 consent to that.

18 A. Are you -- are you specifying a sWAA-off
19 user then?

20 Q. It's a sWAA-off user, but they do not 03:17:35
21 consent to Google obtaining their device
22 identifier.

23 And so I'm asking you to assume that, as
24 a result, Google is disabled from understanding
25 that user's sWAA status. 03:17:50

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1 A. Okay. 03:17:54

2 Q. Okay. Is it fair to say that for some of
3 the conversions that you measure in Scenario 1 as
4 unjust enrichment would have been conversions that
5 were initiated or consummated by one of those users 03:18:12
6 I just mentioned?

7 A. I don't -- I don't think so. I -- no.
8 That would not -- that would not have come into my
9 model.

10 Q. Why not? 03:19:05

11 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 03:19:38

16 Q. Sure.

17 MR. LEE: Take your time.

18 THE DEPONENT: It would -- that would not
19 have come into my analysis.

20 Q. (By Mr. Santacana) Please elaborate. 03:20:31

21 A. So if I understand your question
22 correctly, you're asking me if Google could not
23 know whether a user's sWAA status was off or not
24 because of iOS 14.5 or later.

25 [REDACTED] [REDACTED]
Page 151

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 A. Well, if you look at -- if you look at

10 Schedule 14.1. 03:21:41

11 Q. I'm there.

12 A. No. I pointed you to the wrong schedule.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 For example, if you go to Schedule 2.2 of

20 my analysis. So -- 03:22:50

21 Q. Got it.

22 MR. LEE: Wait. I think he's still --

23 THE DEPONENT: [REDACTED]

[REDACTED]

[REDACTED] 03:23:11

03:24:30

03:25:50

1	Q. I'm on Schedule 13.1. Where are you?	03:25:54
---	---	----------

2 A. I'm -- oh, I'm on Schedule 13.2. 13.2 is
3 the data that feeds this.

[illegible]

1 your previous question correctly. 03:27:42

2 Q. Right.

3 A. Okay.

4 Q. You're -- to be clear, when you say

5 "calculations," what I mean is, are there 03:27:49

6 conversions that you say the revenue from which

7 should be disgorged that come from iOS 14.5 or

8 later users who did not consent to share their

9 identity with third parties.

10 But go ahead. 03:28:10

11 A. My understanding of -- of the

12 hypothetical is that -- the premise here is that

13 Google does not know whether their SWAA is off or

14 not.

15 Q. At the time that they are using an app on 03:28:29

16 their iOS device, of course Google knows for all

17 of its Google accounts if SWAA is on or off at any

18 given time, as you point out in 13.2.

19 A. Uh-huh.

20 Q. But in the moment where the user is using 03:28:45

21 an iOS device, and they happen to have a Google

22 account, and they happen to see an ad on an

23 AdMob-enabled app on an iOS device in iOS 15,

24 and they convert, are you proposing to disgorge

25 that conversion? 03:29:04

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1 A. It seems like a very complex 03:29:53
2 hypothetical. I'm not 100 percent sure if I can
3 answer it as I sit here. I'd have -- I'd have to
4 think about that more.

5 Q. Let me see if I can make it less 03:30:03
6 complicated. Sorry.

7 I think you said the technical limitation
8 at issue started with iOS 14.5?

9 A. That is my understanding.

10 Q. Okay. So the Internet says that was 03:30:19
11 released in April 2021. I don't know if that's
12 true, but let's just assume for a minute that's
13 true. Okay?

14	Assume further that, starting in April of	
15	2021, though Google knows the sWAA status of their	03:30:38
16	users in their Google account, when their users use	
17	an iOS device, Google is disabled from knowing	
18	that they are a Google user and that they have a	
19	sWAA status at all by Apple's operating system.	

20	In your calculations of conversion	03:31:01
21	measurement revenue that should be disgorged, are	
22	there -- is there conversion measurement revenue	
23	post April 2021 that you're proposing be disgorged	
24	in the situation where Google doesn't know its	
25	users are using an iOS device or that they have a	03:31:18

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1 sWAA-off status? 03:31:30

2 A. Answering to the best of my ability as I

3 sit here, that would be likely be in. But I'm

4 not -- I can't just -- as I sit here, I'm not

5 100 percent sure. That could take me, like, hours 03:31:46

6 to figure out for sure if that's -- if that's right

7 or not.

8 Q. Okay. To be clear, you did not attempt

9 at any point in your analysis to exclude post iOS

10 14 users' conversions from the denominator of 03:32:02

11 conversion measurement revenue that you were

12 looking at for disgorgement, right?

13 A. I -- that is correct. I did not.

14 Q. If the Court were to rule that Google was

15 not obligated to honor the sWAA setting of a user 03:32:29

16 on iOS who had not consented to be identified by

17 a third party, like Google, wouldn't you need to

18 cut out the conversions that would have been

19 consummated in those situations from your

20 Scenario 1 damages figure? 03:32:55

21 MR. LEE: Incomplete hypothetical.

22 Answer if you can.

23 THE DEPONENT: I -- I don't know the

24 answer to that, because I can't -- because I would

25 have -- I would have to go back. I would have to 03:33:14

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1 try to figure that out. I can't -- I did not cut 03:33:16
2 out any iOS users. I said that they may likely
3 be in, but I am not 100 percent sure. I would have
4 to -- I would have to analyze that. I can't answer
5 that as I sit here. 03:33:28

6 Q. (By Mr. Santacana) Why aren't you sure?
7 If you didn't cut them out, then they must be in,
8 right?

9 A. They are highly likely in, but I'm not --
10 I would need to -- I just need to understand that 03:33:37
11 hypothetical a little bit better to make sure that
12 they were, in fact, in.

13 I don't -- I can't think of a reason as
14 sit here that they're not in, but they may not be
15 in. 03:33:48

16 The information is certainly available.
17 I've made estimates as to iOS -- non- -- in my
18 calculations, if one were to need to cut certain
19 things out, one could do -- one could do that based
20 on market share percentages and shared-in 03:34:05
21 percentages. That's -- that's available if, in
22 fact, it were necessary.

23 Q. Fair enough.

24 And as you know, you have an opportunity
25 to review the transcript and correct errors. If 03:34:16

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1 you conclude that this testimony is erroneous, of 03:34:18
2 course you can always correct that.

3 That's not a question. You're just --

4 A. Well, no. I'm not -- I'm not thinking
5 that any of my testimony is erroneous. 03:34:29

6 Q. I know. No, no, no. I know.

7 I'm saying, you'd need you hours to check
8 to be sure. So if you choose to take the time to
9 check and conclude that what you've just said is
10 wrong, you will have a chance to correct that. So 03:34:41
11 you don't need to be worried about it right now.

12 MR. LEE: Yeah, he's not trying to trick
13 you or anything.

14 THE DEPONENT: No, no, no. No. I'm just
15 saying -- I'm just saying the hypothetical to begin 03:34:50
16 with, my understanding is not -- is not accurate
17 because I understand that Google knows how to check
18 or has the ability to check their -- the SWAA
19 status. But --

20 Q. (By Mr. Santacana) Well, let me -- 03:35:06

21 A. But you're saying if they didn't check,
22 and they weren't allowed to check, then I would
23 need to -- I'd need to analyze that.

24 Q. Yeah.

25 So that's -- all I'm saying is, you think 03:35:16

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1 it's highly likely you included that. That's fine. 03:35:17

2 I understand you think it should be included.

3 I'm just saying, if later you conclude
4 that you did deduct it somehow -- you counted for
5 it in some way or the numbers you used
6 automatically accounted for it -- you'll have a
7 chance to put that on the record.

03:35:30

8 A. I understand that.

9 Q. Okay. All right. Let's switch gears for
10 a sec. 03:35:45

11 So you used these percentage in --

12 A. Can you just -- now what we are talking
13 about, these percentage here now?

14 Q. In Schedule 13.1.

15 A. Okay. 03:35:57

16 Q. Is what I was about to say.

17 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 03:36:43

21 A. Yes.

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 03:37:02

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1 A. I think -- I think you're talking about 03:37:08
2 an interrogatory response.

3 Q. I am.

4 A. Yes, I know -- I know the document that
5 you're talking about. 03:37:14

6 Q. Did you review that document in preparing
7 your expert opinion?

8 A. Yes.

9 Q. [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

22 Whereas this data here that I'm relying
23 upon seems like it came from a more reliable source
24 given the nature of the information that was
25 provided, as well as the consistency and -- the

03:38:38

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1 consistency of the data and the expectations one 03:38:46
2 would have from reviewing an analysis like -- like
3 this.

4 [REDACTED]
[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

8 A. Yes, that is -- that is correct.

9 Q. Those two sets of data were measuring
10 different things, fair to say, right? 03:39:28

11 MR. LEE: Objection to form.

12 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 03:39:49

16 Q. (By Mr. Santacana) If the interrogatory
17 data you're referring to -- one second.

18 MR. SANTACANA: I'm just going to mark it
19 to make this easier.

20 (Exhibit 3 was marked for identification 03:40:10
21 by the Court Reporter and is attached hereto.)

22 Q. (By Mr. Santacana) But while we wait for
23 that, if the -- [REDACTED]

[REDACTED]
[REDACTED] [REDACTED]

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4 MR. LEE: Objection to form.

6 Q. (By Mr. Santacana) Why not?

11 more reliable, would -- would one use that.

Page 164

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█ data in the record

related to traffic.

Q. (By Mr. Santacana) Look at paragraph 89

of your report.

03:42:32

You there?

A. Yes.

█

█

█

█

█

█

█

█

█

█

█

█

█

█

█

█

[illegible]

16 Q. Did you rely on those documents that you
17 were just talking about that [REDACTED]

21 A. I don't know that I relied on those
22 documents.

1 relied on them, then I would have cited them in my 03:44:52

2 report, or at least I would have attempted to.

3 I try to be as complete with documents

4 that I rely upon --

5 Q. So is it -- 03:45:02

6 A. -- for this analysis.

7 Q. Is it fair to say that those documents

8 did not form the basis of your conclusion that

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 I can try it again.

13 A. Yeah, I'm not quite sure now what you're

14 asking.

15 Q. Is it fair to say that those documents 03:45:31

16 did not form the basis of the -- strike that.

17 Let me try it a completely different way.

18 I'm looking at page 32 of your report,

19 paragraph 89, 90, Figure 21, the footnotes.

20 This is where you conclude what 03:45:57

21 [REDACTED]

22 [REDACTED]

23 [REDACTED].

24 A. This is where I write about what I --

25 where I write about it. 03:46:16

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1 Q. This is where you explain your reasoning? 03:46:17

2 A. That is correct.

3 Q. And in that explanation, you do not say

4 that your conclusion is supported by other

5 documents other than the ones cited here, right? 03:46:27

6 A. That is accurate. I do not say that in

7 that particular -- in those particular paragraphs.

8 Those other documents did not go specifically into

9 my calculations.

10 Q. Fair enough. 03:47:23

11 As a conceptual matter, your goal in

12 paragraph 89 and the supporting schedules is to

13 determine [REDACTED]

14 [REDACTED]

15 A. [REDACTED]

16 [REDACTED]

17 That's accurate.

18 Q. Is it fair to say that an assumption of

19 your conclusion in paragraph 89 is that [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 A. As I sit here, I think that that's fair

23 to say. I haven't made an adjustment for any

24 material differences between WAA-off or sWAA-off

25 users as it relates [REDACTED] 03:49:32

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1 [REDACTED] [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED] Take a look at Figure 15 of your report,

5 [REDACTED] we've been discussing. 03:49:51

6 There's a note in a black box on that slide that

7 you rely on.

8 Would you just read that into the record

9 for me?

10 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED]

25 [REDACTED]

26 [REDACTED] [REDACTED]

27 [REDACTED]

28 [REDACTED] [REDACTED]

29 [REDACTED]

30 [REDACTED]

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1 A. I'm there. 03:54:20

2 MR. LEE: Page 3?

3 MR. SANTACANA: I'm on page 16,

4 Exhibit 3.

5 MR. LEE: Got it. Thanks. 03:54:29

6 MR. SANTACANA: Let me know when you're
7 there.

8 MR. LEE: Just give me a second.

9 THE DEPONENT: Page 16, you said?

10 Q. (By Mr. Santacana) Yup. 03:54:47

11 A. Okay. Okay. I'm there.

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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14 MR. LEE: Mike, how are you feeling in
15 terms of energy? Do you need to stretch your legs? 03:58:03
16 We've been going about 55 minutes.
17 THE DEPONENT: Yeah, I mean, I think we
18 just took that one short break. So I guess soon, I
19 wouldn't mind taking a break.
20 And unfortunately, it's warming back up 03:58:10
21 in here again too.
22 MR. LEE: That's sort of what I was
23 thinking is it's just -- some fresh air outside.
24 MR. SANTACANA: Let's take a break.
25 MR. LEE: I can sense you're getting 03:58:21

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1	warm.	03:58:23
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2 THE VIDEOGRAPHER: This marks the end of
3 Media No. 4. Off the record. The time is 3:57.

4 (Recess taken.)

5 THE VIDEOGRAPHER: This marks the 04:06:47
6 beginning of Media No. 5 in the deposition of
7 Michael Lasinski. We are back on the record. The
8 time is 4:06.

9 (Exhibit 4 was marked for identification
10 by the Court Reporter and is attached hereto.) 04:06:54

11 Q. (By Mr. Santacana) Okay. Take a look at
12 Exhibit 4.

13	A. Okay.
----	----------

14 [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

--	--	--	--

_____, _____, _____

[illegible]

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15	All right. Let's switch gears. Let's	04:12:09
16	talk about conversion measurement for a minute.	

17 I think you said earlier that -- I think
18 you distinguished earlier revenue that Google makes
19 from placing advertising from revenue that Google
20 makes from conversion measurement. 04:12:28

21 Is that -- did I mishear you?

22 A. No, I think that there are -- there is --
23 there are distinct revenue pockets.

24	Q. What is the difference between those two	
25	revenue pockets?	04:12:44

A. What I understand is that there are situations in which Google charges based on a specific conversion event, an actual conversion.

4 And then my -- I also understand that
5 Google uses conversion tracking information to 04:13:01
6 inform its algorithms that it uses in its analysis,
7 if you will, for bidding for ads, advertisers
8 bidding for ads.

9 Q. In what situations does Google charge
10 based on a specific conversion event? 04:13:32

11 A. My -- my understanding is that there
12 are -- my understanding is that there are certain
13 situations where advertisers can pay for their
14 campaigns when customers actually convert on the
15 app's -- on the apps's website or the app.

04:14:37

16 Q. What are you reading from there?

17 A. I'm reading from my own report, and I'm
18 on page 9.

19	Q.	Okay.	Okay.
----	----	-------	-------

20 On page 9, at the top, this is the 04:15:08
21 tail-end of paragraph 23, you say "Advertisers can
22 choose to finance their campaigns based on
23 conversions, paying Google 'when customers convert
24 on the advertiser's website or app.'"

25	And the phrase -- what I should have said	04:15:24
----	---	----------

1 is "paying Google," quote, when customers convert 04:15:31
2 on the advertiser's website or app, closed quote.

3 And there, you are quoting a Google Ads
4 help page titled "Use pay for conversions in
5 Display campaigns," right?

6	A. That is correct.
---	---------------------

7 Q. And it's on that basis that -- that you
8 just testified that you understand that there are
9 certain situations where advertisers can pay for
10 campaigns when customers actually convert on the 04:15:59
11 app?

12 A. Yeah, that basis as well as there are
13 other documents in the case that seem to indicate
14 that.

[illegible]

	[REDACTED]	
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	[REDACTED]	[REDACTED]	[REDACTED]
--	------------	------------	------------

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1 MR. SANTACANA: Uh-huh.

2 MR. LEE: Okay. Are you there too?

3 THE DEPONENT: Yes.

Item	Value	Value	Value
1	100	100	100
2	100	100	100
3	100	100	100
4	100	100	100
5	100	100	100
6	100	100	100
7	100	100	100
8	100	100	100
9	100	100	100
10	100	100	100
11	100	100	100
12	100	100	100
13	100	100	100
14	100	100	100
15	100	100	100
16	100	100	100
17	100	100	100
18	100	100	100
19	100	100	100
20	100	100	100
21	100	100	100
22	100	100	100
23	100	100	100
24	100	100	100
25	100	100	100
26	100	100	100
27	100	100	100
28	100	100	100
29	100	100	100
30	100	100	100
31	100	100	100
32	100	100	100
33	100	100	100
34	100	100	100
35	100	100	100
36	100	100	100
37	100	100	100
38	100	100	100
39	100	100	100
40	100	100	100
41	100	100	100
42	100	100	100
43	100	100	100
44	100	100	100
45	100	100	100
46	100	100	100
47	100	100	100
48	100	100	100
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86	100	100	100
87	100	100	100
88	100	100	100
89	100	100	100
90	100	100	100
91	100	100	100
92	100	100	100
93	100	100	100
94	100	100	100
95	100	100	100
96	100	100	100
97	100		

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[illegible]

24 Q. So what does it mean to bid against a
25 conversion if it is not paying per conversion?

04:23:39

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A. So what my understanding there is is bidding against the -- the Google Analytics for Firebase data there at -- it's bidding it in an -- based on an algorithm or information available to it.

6 Q. But how is that different from paying per
7 conversion? If they are not paying for conversion,
8 what are they paying for?

9 A. They are paying -- my understanding is
10 that they're -- they're paying for ad placements. 04:24:21

The diagram illustrates a 15-year timeline from 1990 to 2004. Each year is marked on the left, and a horizontal bar indicates the duration of a project or activity. The bars are black and vary in length, showing the timeline of various projects over the 15-year period.

Year	Project/Activity Duration (Approximate)
1990	1990 - 1991
1991	1991 - 1992
1992	1992 - 1993
1993	1993 - 1994
1994	1994 - 1995
1995	1995 - 1996
1996	1996 - 1997
1997	1997 - 1998
1998	1998 - 1999
1999	1999 - 2000
2000	2000 - 2001
2001	2001 - 2002
2002	2002 - 2003
2003	2003 - 2004
2004	2004 - 2005

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Are you familiar with AppsFlyer and

Kochava?

A. I am not, no.

Q. So if the advertiser is paying Google to

04:26:22

place the ad but, as you say, they wouldn't be

allowed to track the conversion using Google, why

in Scenario 1 do you conclude that they simply

wouldn't place the ad rather than track the

conversion some other way?

04:26:44

MR. LEE: Sorry. Who is the "they" in

that sentence?

MR. SANTACANA: The advertiser.

THE DEPONENT: I -- I think if -- in that

case, I'm not sure that Google -- well, Google

04:26:58

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1 needs to charge them for that ad. So Google needs 04:27:08
2 to track the ad and track the conversion.

3 So it's -- it's Google's side that I'm
4 looking at here, not the advertiser's side.

5 So if the advertiser wants to use another 04:27:19
6 mechanism to track conversions, they may be able
7 to. But I still think that Google, in this case,
8 tracks that -- tracks that as well.

9 Q. (By Mr. Santacana) You think that Google
10 tracks conversions regardless of whether -- you 04:27:38
11 think that Google tracks conversions and App Promo
12 campaigns regardless of whether the advertiser uses
13 GA4F?

14 MR. LEE: Mischaracterizes.

15 THE DEPONENT: No. If they use GA4F, 04:27:53
16 they do.

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■ ■ ■ ■ ■ ■ ■ ■ ■ ■ ■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8 Q. Right.

9 So Scenario 1 is focused on GA4F, and --

10 well, no. Strike that. 04:28:46

11 Your Scenario 1 is focused on the

12 measurement of the conversion; and Scenario 2 is

13 focused on the service of the ad?

14 Is that -- am I right about that?

15 A. Yes. 04:29:00

16 Q. So, again, sticking with Scenario 1 and

17 measurement of the conversion, you posit that if

18 Google couldn't measure the conversion, then it

19 could not make the ad revenue that it makes for App

20 Promo campaigns, right? 04:29:09

21 A. Correct.

22 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18 Q. Well, then, what you just said cannot
19 possibly be true.

20 A. Yes, it can. 04:30:12

21 Q. Advertisers pay to place advertising with
22 Google, right?

23 A. Yes.

24 Q. I give you money; you place the ad,
25 right? 04:30:21

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1 A. Correct. 04:30:23

2 Q. I can measure whether the ad converted
3 using a Google tool, right?

4 A. That's my understanding, yes.

5 Q. I can also measure whether the ad 04:30:34
6 converted using a nonGoogle tool, right?

7 A. That maybe accurate.

8 Q. And I can use the nonGoogle tool to
9 integrate with Google Ads so that the nonGoogle
10 party tells Google when I get a conversion, right? 04:30:48

11 MR. LEE: Objection to form.

12 THE DEPONENT: I don't know -- I don't
13 know the answer to that. That's beyond the scope
14 of my technical ability.

15 Q. (By Mr. Santacana) Okay. Well, assume 04:31:02
16 for me that that's possible, or even common.

17 Why do you posit that the measurement of
18 the conversion by Google, as opposed to some other
19 party, is a but-for cause of the revenue?

20 A. Because -- because that -- because Google 04:31:29
21 used the data, the information that it had
22 gotten -- that it had gotten inappropriately, to
23 actually measure those conversions. And -- and
24 this is the amount of data that they used to do
25 that. 04:31:48

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1 Q. I understand that completely. 04:31:48

2 My question is, in the but-for world --
3 so you agree with me that -- let's back up for a
4 second.

5 Okay? 04:31:58

6 A. Sure.

7 Q. Advertisers, when they place ads tell
8 Google when they want an App Promo campaign that
9 they want a certain kind of conversion, right?

10 A. That -- that certainly is possible. 04:32:17

11 Q. Well, aren't you assuming that in this
12 opinion?

13 A. Yes. Yes.

14 Q. It's not possible. It's what you believe
15 to be true? 04:32:34

16 A. Correct.

17 Q. So they also tell Google to serve a
18 particular creative, right? Here's the language
19 that should be in my ad, right?

20 A. I -- I don't know -- I don't know what
21 advertisers do at that level. 04:32:48

22 Q. Why did you choose conversions rather
23 than impressions as the focus of your disgorgement
24 of profit Scenario 1?

25 A. Because my understanding is that Google 04:33:29

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1 would not have access to the conversion data when 04:33:30
2 sWAA is off.

3 Q. So part of the assumption behind
4 Scenario 1 of your disgorgement of profit opinion
5 is that if Google could not have used sWAA-off data 04:33:48
6 to measure conversions, then it would have been
7 impossible to measure the conversions from the ads
8 that were served?

9 A. I'm not saying -- I don't think I made
10 the assumption that it would have been impossible 04:34:09
11 but, in fact, that that's what they did. That's
12 what they used the data for, to measure the
13 conversions. And, therefore, they would not --
14 they used that data to generate that revenue. They
15 used sWAA-off users' data to generate that revenue. 04:34:31
16 That, I calculate in Scenario 1.

17 [REDACTED]
[REDACTED]
[REDACTED]

20 Q. Your task was to determine how much 04:35:09
21 profit Google made thanks to its use of that
22 sWAA-off data to measure conversions, right?

23 A. In part, yes.

24 Q. You told me that advertisers pay to place
25 advertisements, right? 04:35:24

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1 A. Correct. 04:35:26

2 Q. They're not paying per conversion in
3 these App Promo campaigns, right?

4 A. There may be some situations in which
5 they do. But certainly, there are some situations 04:35:34
6 in which they're not.

7 Q. How can you attribute the entirety of the
8 ad revenue for the placement of an ad campaign to
9 the use of sWAA-off data to measure conversions
10 when the payment is for the placement of ads? 04:36:19

11 A. Because -- for two reasons.

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 Q. The document you're referring to, that's
20 the ChromeGuard study? 04:37:07

21 A. That is correct.

22 Q. Is there any other bases or situation --
23 is there any other measurement like that that
24 Google has performed that you're referring to here?

25 A. Above and beyond the ChromeGuard study? 04:37:19

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1 They may have. That's the one that I'm aware of 04:37:21
2 that's available in this case. I don't know if
3 they've done other studies as well.

4 Q. Okay. So here's what I don't understand.

5 An advertiser can pay Google to place 04:37:46
6 advertising for an App Promo campaign and not rely
7 on GA4F to measure conversions from that campaign,
8 right?

9 A. That certainly may be possible.

10 Q. Do you have any reason to doubt that 04:38:10
11 that's true?

12 A. No, I do not.

13 Q. So given that, why do you assume that the
14 ability to measure conversions with Google's
15 product is a but-for cause of the ad spend as 04:38:22
16 opposed to something else?

17 MR. LEE: Asked and answered.

18 THE DEPONENT: I think -- I think I
19 answered that before.

20 Google used that information to track 04:38:32
21 that revenue, to -- to generate -- to analyze and
22 track that revenue. And, therefore, they should
23 not have been able to, because they should not have
24 had that information.

25 Q. (By Mr. Santacana) But how do you know 04:38:52

1 it's not a completely irrelevant piece of 04:38:53
2 information?

3 MR. LEE: Objection.

4 Q. (By Mr. Santacana) So, for example, an
5 advertiser places an ad campaign. They don't just 04:39:01
6 say "Use GA4F to track conversions." They also
7 say, "Here's my phone number and my contact."
8 Okay?

9 Google presumably keeps those phone
10 numbers in a database. 04:39:12

11 If a Court ruled that Google's not
12 allowed to keep the phone numbers for the
13 advertisers in a database, would you conclude that
14 all of the ad revenue would have been ill-gotten,
15 because if they didn't have the phone number, then 04:39:21
16 they couldn't have run the ad?

17 It would be ridiculous, right?

18 A. I don't even understand what you're
19 talking about at that point.

20 Q. I don't really understand what you're 04:39:33
21 talking about either.

22 MR. LEE: Same objection.

23 Q. (By Mr. Santacana) I mean, it would be a
24 ridiculous thing to say that the phone number of
25 the contact at the advertiser is a but-for cause of 04:39:39

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1 the advertising revenue, right? 04:39:41

2 MR. LEE: Objection. Improper and
3 incomplete hypothetical. Lack of foundation.

4 THE DEPONENT: I -- I don't understand
5 what you're talking about. 04:39:50

6 Q. (By Mr. Santacana) In order to disgorge
7 profit, there needs to be a connection between the
8 alleged unlawful conduct and the profit that's
9 being disgorged, right?

10 A. That is my understanding, yes. 04:40:05

11 Q. A causal connection, right?

12 A. That is my understanding.

13 Q. So when you have done a patent
14 infringement case, and you do a disgorgement of
15 profit analysis, and there's an infringing 04:40:18

16 component of a larger product -- right? You with
17 me so far?

18 A. I think so, yes.

19 Q. The job of the damages expert in that
20 situation is to determine the proportion of profit 04:40:30
21 for the whole product that the infringing component
22 contributed, right?

23 A. I mean, in -- in a royalty case, that is
24 correct.

25 Q. Sometimes the component is really 04:40:49

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1 important, so important that you couldn't even sell 04:40:50
2 the device if it weren't for that component which
3 infringes, right? In which case, damages would be
4 the whole revenue for the infringing product?

5 A. I'm not sure that that's accurate. But I 04:41:07
6 don't even know -- I guess if you're talking about
7 a sales -- two-competitor -- a two-competitor
8 market, that could be possible.

9 Q. Sometimes a component is completely
10 unimportant. It happens to infringe, but the 04:41:18
11 seller could have used any number of the other
12 options, right?

13 There's lots of RAM chips. If this one
14 infringes, we'll use a different one. I still
15 would have sold my laptops, just as many as I would 04:41:28
16 have otherwise, right?

17 You hear what I'm saying?

18 A. I do understand what you're saying.

19 Q. So why doesn't that same analysis apply
20 here? 04:41:38

21 How -- where -- where in here did you
22 evaluate whether the ability to measure conversions
23 with a Google tool is more like the RAM chip in a
24 laptop that doesn't really drive the revenue or is
25 more like some component that can't -- that you 04:41:57

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1 can't live without? 04:42:02

2 How do you know that's what's driving the
3 revenue?

4 MR. LEE: Incomplete hypothetical. Asked
5 and answered. 04:42:10

6 You can answer again.

7 THE DEPONENT: I don't even know if I --
8 if I said yes to you or no to you, based on all the
9 things that just happened, if I'd be agreeing with
10 you or disagreeing with you. 04:42:23

11 I think we're -- I guess I'm just not
12 understanding where you're trying to go. You had
13 like a four-paragraph question, so...

14 And I want to you know, take a break at
15 some point again. 04:42:36

16 MR. LEE: Yeah.

17 THE DEPONENT: It's getting hot again in
18 here.

19 MR. LEE: I agree. It's got to be like
20 85 degrees in here. 04:42:41

21 MR. SANTACANA: Okay. Well, can we
22 just -- can we just finish this quick, then? I'll
23 be quick.

24 Q. (By Mr. Santacana) To put it a different
25 way, if at the start of the class period Google had 04:42:52

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1 said, "You may not use Google Analytics for 04:42:56
2 Firebase to track conversions on App Promo
3 campaigns."

4 Okay? At all. Not allowed. We're
5 discontinuing the product. 04:43:08

6 A. Okay.

7 Q. Is it -- doesn't it follow from your
8 analysis here that all App Promo advertising would
9 immediately cease?

10 A. So are you asking me to assume that -- 04:43:28

11 MR. LEE: Let me object as improper and
12 incomplete hypothetical first.

13 THE DEPONENT: Okay.

14 MR. LEE: Calls for speculation. Lack of
15 foundation. 04:43:41

16 Go ahead.

17 THE DEPONENT: That Google would -- would
18 tell people to use other...

19 Q. (By Mr. Santacana) Yeah.

20 A. To use other and not -- and not live up 04:43:48
21 to their promise on the SWAA data, and still give
22 those --

23 Q. No. Let me try again.

24 MR. LEE: Well, let him finish, and then
25 we can try again. 04:44:03

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1 THE DEPONENT: Well -- okay. 04:44:03

2 Q. (By Mr. Santacana) Imagine that at the
3 start of the class period, Google said, "Hey, App
4 Promo advertisers, we're getting out of the
5 analytics game. No more GA4F. Not for sWAA-on 04:44:14
6 users, not for sWAA-off users, not for anybody.
7 Goodbye GA4F."

8 Right? You with me so far?

9 A. Yes.

10 Q. You have percentages here on conversion 04:44:26
11 types bid against GA4F which you rely on, right?

12 A. Yes.

13 Q. Is it -- are you saying that Google's ad
14 revenue for App Promo campaigns would drop by the
15 percentages that were bid against GA4F in those 04:44:41
16 years if Google discontinued GA4F?

17 A. Well, that didn't happen.

18 Q. I understand.

19 A. So I don't know -- I don't know what
20 would happen. 04:44:52

21 Q. Well, you're trying to determine how much
22 profit Google made, right, from this component,
23 which is alleged to be unlawful, as opposed to
24 other things?

25 A. Which I did. 04:45:05

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1 Q. So I'm just trying to understand how you 04:45:06
2 know that this component is what drove the revenue
3 and not other things. Because I don't see in your
4 report anywhere where it says, "This component is
5 the but-for cause of the revenue." 04:45:17

A horizontal bar chart with 15 rows. Each row has a small black square on the left, followed by a label, and then a horizontal bar representing a percentage. The bars vary in length, with some being very short and others nearly spanning the width of the chart area. The labels are as follows:

Category	Percentage (approx.)
6	10%
	85%
	15%
	35%
	65%
	95%
	60%
	80%
	75%
	30%
	70%
	95%
	75%
	85%
	70%
	15%

20 MR. LEE: Now I'm going to actually say 04:46:03

21 that we're taking a break, because his neck is

22 getting red, and his ears are getting red.

23 And I know we don't want him to be

24 uncomfortable. He asked for a break a while ago.

25 So let's go off the record. 04:46:12

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1 MR. SANTACANA: Sure. It was one 04:46:14
2 question ago, but sure.

3 THE VIDEOGRAPHER: Off the record. The
4 time is 4:45.

5 (Recess taken.) 04:46:19

6 THE VIDEOGRAPHER: This marks the
7 beginning of Media No. 6 in the deposition of
8 Michael Lasinski. We are back on the record, the
9 time is 5:09.

10 Q. (By Mr. Santacana) When we left off, you 05:10:03
11 had mentioned the ChromeGuard study.

12 Do you recall that?

13 A. Correct.

14 So on what basis did you conclude that
15 the measurements done in the ChromeGuard study were 05:10:22
16 analogous to the measurement you were trying to
17 accomplish here?

18 MR. LEE: Objection to form. Vague as to
19 "here."

20 THE DEPONENT: So in ChromeGuard -- in 05:10:45
21 the ChromeGuard study, it analyzes a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 My understanding here, similarly, is 05:11:21

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1  there [REDACTED] [REDACTED]
2  [REDACTED], and this relates to a
3  privacy setting as well, as -- [REDACTED]
4  [REDACTED]
5      [REDACTED] [REDACTED] [REDACTED]
6  [REDACTED]
7      [REDACTED]
8      [REDACTED] [REDACTED]
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16 Q. (By Mr. Santacana) What are you looking

17 at right now? Figure --

18 A. I'm not --

19 Q. -- 28?

20 A. I wasn't actually looking at anything. I 05:17:27
21 have it open to Figure -- to Figure 28, but I
22 wasn't looking at anything as I was answering that.

23 [REDACTED]

[REDACTED]

[REDACTED]

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[illegible]

23	You understand my question?
----	-----------------------------

24 A. Yeah, I understand your question, I

25	think.
----	--------

05:23:37

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1 From -- from my analysis in sWAA off, I 05:23:37
2 did not need to make a calculation of that.

█ [REDACTED]
█ [REDACTED]
█ [REDACTED] █
█ [REDACTED].

7 Q. Sorry. I'm not -- I don't understand
8 your answer. I'm just -- I'm going to repeat my
9 question, and maybe you can help me understand your
10 answer. 05:24:35

█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
█ [REDACTED] █
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█ [REDACTED] 05:25:30

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14 Q. So on the Web, Google Display ads can be
15 placed and paid for in a variety of ways, right? 05:26:44

16 A. I believe that that's accurate.

17 Q. That includes, for example, cost per
18 click, right?

19 A. I believe that that's accurate.

20 Q. It can include cost per impression? 05:27:02

21 A. I believe that that's accurate as well.

22 Q. It can include cost per conversion?

23 A. Correct.

24 Q. And there are other ways to pay as well,
25 right? 05:27:20

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1

A. That's consistent with my understanding.

05:27:24

█

█

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8

A. Could you repeat that question?

█

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1	Mischaracterizes.
---	-------------------

05:29:02

2 THE DEPONENT: I don't think I testified

3	to that.
---	----------

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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[illegible]

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1	A. My --	05:30:31
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2 MR. LEE: Objection to form.

3	Mischaracterizes.
---	-------------------

[illegible]

16 Q. And so that helped you determine
17 accurately, as a historical matter, how much
18 revenue you believe is attributable to Google's
19 conversion measurements using GA4F in App Promo
20 campaigns, right?

17 accurately, as a historical matter, how much
18 revenue you believe is attributable to Google's
19 conversion measurements using GA4F in App Promo
20 campaigns, right?

18 revenue you believe is attributable to Google's
19 conversion measurements using GA4F in App Promo
20 campaigns, right?

19 conversion measurements using GA4F in App Promo
20 campaigns, right?

20 campaigns, right? 05:31:34

21 A. Maybe I'm misunderstanding what you're
22 trying to ask, but Google provided that information
23 itself. So it's not an assumption of mine. Google
24 actually provided that information, the amount of
25 revenue that's attributable to GA4F conversions.

05:31:48

22 trying to ask, but Google provided that information
23 itself. So it's not an assumption of mine. Google
24 actually provided that information, the amount of
25 revenue that's attributable to GA4F conversions.

23 itself. So it's not an assumption of mine. Google
24 actually provided that information, the amount of
25 revenue that's attributable to GA4F conversions.

24 actually provided that information, the amount of
25 revenue that's attributable to GA4F conversions.

25 revenue that's attributable to GA4F conversions. 05:31:48

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1 Q. Well, maybe we're using the word 05:31:53

2 "attributable" in different ways.

3 You conclude that that is a fair way to

4 determine how much of Google's revenue from App

5 Promo campaigns is attributable to the alleged 05:32:06

6 unlawful conduct, right?

7 A. Yes, that is correct. For App Promo.

8 Q. Did you do anything to consider how much

9 revenue Google would have made if it had not been

10 able to measure conversions using GA4F? 05:32:34

11 A. Well, I leave that revenue -- you know,

12 revenue that is not related to GA4F, I -- is

13 untouched in my analysis under Scenario 1.

14 Q. As a historical matter. I understand.

15 My question is: Did you take the 05:32:57

16 additional step in your report of analyzing what

17 would have happened in the but-for world if Google

18 had not been permitted to measure conversions using

19 GA4F?

20 Did you do anything to think about that 05:33:14

21 as a methodological exercises?

22 A. So you're saying shut off GA4F

23 completely?

24 Q. For sWAA users.

25 A. Well, I haven't seen anything in the 05:33:34

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1 record that would indicate that that's something 05:33:35

2 that they're doing.

3 Q. Well, I understand that --

4 A. So --

5 Q. -- but, for example, Mr. Hochman opines 05:33:41

6 that that's what Google should do, right?

7 So I'm just asking, have you -- have you

8 done anything to measure what would happen in the

9 world if that happened?

10 A. I'm not aware of an alternative scenario 05:33:57

11 that one would use to measure that if that were to

12 happen. So I did not measure that.

13 Q. Okay. And you are aware -- let's --

14 let's take Mr. Hochman's opinion -- you've read his

15 report, right? 05:34:12

16 A. Yes, I did. But I -- to say that I'm

17 aware of Mr. Hochman's opinions will probably

18 require me to go back and look at Mr. Hochman's

19 report.

20 Q. Well, I'm not going to get too deep into 05:34:22

21 it. I'm just interested right now in his opinion

22 near the end of his report where he says going

23 forward, Google could just stop measuring

24 conversions from SWAA-off users. Okay?

25 Have you done anything to consider, if 05:34:37

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1 Google did that, what would happen to Google's ad 05:34:41
2 revenue?

3 A. I mean, the information that I'm
4 reading -- that I've read in this case indicates
5 that that's not something that Google is going to 05:35:05
6 do. They, in fact, think that it's -- GA4F is
7 critically important to them going forward. So I
8 don't think that that's something that they're
9 going to do.

10 I have not measured an impact of what 05:35:18
11 would do if that, in fact, did happen, if they shut
12 off GA4F.

13 Q. Right. Okay.

14 I mean, you understand that one of the
15 things that Mr. Hochman is saying is the Court 05:35:30
16 could order Google to not measure conversions from
17 sWAA-off users, right?

18 I mean, the plaintiffs alleged that's
19 illegal, so the Court may say, "Don't do that
20 anymore," right? 05:35:44

21 A. The Court may say that.

22 Q. Okay. So if the Court were to do that,
23 don't measure conversions for sWAA-off users
24 anymore, it's illegal, what, in your mind, would
25 happen to the ad spend that formerly had been spent 05:36:06

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1 and bid against GA4F conversions? Would it 05:36:11
2 disappear?

3 A. I mean, that's a hypothetical that I
4 don't need to calculate. If, going forward, they
5 don't use it, my damages calculation only goes up 05:36:28
6 through 2022. So if they don't -- don't use it in
7 the future, I'm not -- I have not analyzed what
8 would happen in that case.

9 Q. Have you analyzed that question with
10 respect to what would have happened if a Court had 05:36:45
11 issued that ruling at the start of the class
12 period?

13 A. My -- no. My -- my assumption -- not my
14 assumption.

15 My assignment here is to calculate what 05:37:05
16 Google, in fact, did do. And they use -- oh, I
17 think you used ill-gotten information or something
18 like that. They used the ill-gotten information to
19 actually track conversions --

20 Q. Right. 05:37:19

21 A. -- during the period.

22 Q. Right.

23 A. And I calculated the profit associated
24 with that.

25 Q. So you did not see it as part of your 05:37:26

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1 assignment to measure the proportion of Google's 05:37:28
2 App Promo revenue that was garnered thanks to the
3 ill-gotten data as opposed to other factors, like
4 quality of the ad service, or the speed of the ad
5 network, or other metrics that Google can provide? 05:37:51

6 A. I did not -- I did not analysis other
7 metrics. I looked at what the actual ill-gotten
8 gains were in this case.

9 Q. And you did not see it as part of your
10 assignment to analyze how Google advertisers or 05:38:10
11 users would have responded to a change in
12 circumstances at the start of the class period
13 where a Court ordered that Google could not measure
14 conversions using GA4F for sWAA-off users?

15 That was not part of your assignment, 05:38:36
16 right?

17 MR. LEE: You mean other than Scenario 1?
18 Maybe I'm not following.

19 MR. SANTACANA: I'm not either.

20 Q. (By Mr. Santacana) Can you answer my 05:38:47
21 question?

22 A. I just don't even know -- if you're not
23 following your own question, I don't know how to
24 answer it, then.

25 Q. No. I'm following Mr. Lee's attempt to 05:38:52

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1 testify for you. 05:38:55

2 Did you see as part of your assignment to
3 analyze how Google advertisers -- excuse me -- how
4 Google advertisers or users would have responded to
5 a change in circumstances at the start of the class 05:39:08
6 period where Google was no longer able to use
7 WAA-off data to measure conversions?

8 MR. LEE: I have the same question and
9 objection.

10 THE DEPONENT: I have not analyzed that 05:39:23
11 with the exception of what I did for my scenarios,
12 Scenario 1 and Scenario 2.

13 Q. (By Mr. Santacana) So okay.

14 With respect to Scenario 1, how -- what
15 was the result of your analysis as to how Google 05:39:37
16 would have responded to that change of
17 circumstances? What do you conclude Google would
18 have done in that situation?

19 A. I have not made a conclusion about what
20 Google would have done. I analyzed what they 05:39:53
21 actually did do.

22 Q. And what did you conclude as to what
23 advertisers would have done in those changed
24 circumstances at the start of the class period?

25 A. I analyzed what -- what the actual world 05:40:12

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1 was, not what they -- not what they would have done 05:40:14
2 in some different but-for world.

3 Q. And what did you conclude, if anything,
4 as to what users would have done in those changed
5 circumstances at the start of the class period? 05:40:24

6 A. I mean, ultimately, I analyzed what they,
7 in fact, did do. Now, I don't even know what
8 the -- what the hypothetical means, what users
9 would have done in that case.

10 Q. Okay. So you didn't reach any 05:40:49
11 conclusions about whether and how users would
12 change their behavior in a situation, at the start
13 of the class period, where the Court had said
14 Google cannot measure conversions with GA4F for
15 sWAA-off users? 05:41:06

16 There's no opinions about that in your
17 report, right?

18 MR. LEE: I'm sorry. You lost me. Can
19 you ask that one more time?

20 THE DEPONENT: So I'm trying to 05:41:15
21 understand what you're saying.

22 MR. LEE: I need to hear the question one
23 more time.

24 MR. SANTACANA: Do you have real time?

25 MR. LEE: I don't. 05:41:22

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1 MR. SANTACANA: Can you pull it up? 05:41:23

2 MR. LEE: I don't have real time.

3 MR. SANTACANA: You're just not paying

4 for it?

5 MR. LEE: I don't use real time as a 05:41:26

6 practice.

7 MR. SANTACANA: Okay. Well, I need you

8 to use either real time or --

9 MR. LEE: I think I've asked you to

10 repeat a question maybe twice today, so -- 05:41:30

11 MR. SANTACANA: I don't agree with you.

12 MR. LEE: You have real time. Do you

13 want to hand it to me, and I can read it again? Or

14 you can just reask the question as a courtesy to

15 me. I'd appreciate it. I need to know whether to 05:41:39

16 lodge an objection or not.

17 Q. (By Mr. Santacana) You didn't reach any

18 conclusions about whether and how users would

19 change their behavior in a situation at the start

20 of the class period where the Court had said Google 05:41:50

21 cannot measure conversions with GA4F for SWAA-off

22 users?

23 MR. LEE: Same objections as before. And

24 asked and answered.

25 THE DEPONENT: I believe I answered that, 05:42:11

1 but I don't know -- I don't really follow that 05:42:12
2 hypothetical, because that did not happen. So I'm
3 not sure --
4 Q. (By Mr. Santacana) I know it didn't
5 happen. 05:42:18
6 A. -- how to answer that.
7 Q. So Google would have --
8 A. I don't understand, like, how would
9 Google have communicated this information to users?
10 Q. (By Mr. Santacana) My question is just, 05:42:28
11 that's not part of your opinions in the case,
12 right? I just want to understand the limits of
13 your opinions.
14 You did not undertake that assignment?
15 MR. LEE: Same question. Same objection. 05:42:37
16 THE DEPONENT: Of -- of what?
17 Q. (By Mr. Santacana) Of how users'
18 behavior would have changed, if at all, in the
19 situation at the start of the class period where
20 the Court ordered that Google could not use 05:42:53
21 sWAA-off data to measure conversions with GA4F?
22 A. I -- I think I'm following the
23 hypothetical. I don't -- I did not --
24 Q. Okay.
25 A. -- measure that. 05:43:12

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1 Q. It's not -- it's not a trick question. 05:43:13

2 A. I'm not --

3 Q. I'm just, like, confirming that that's
4 not something you did, or that you did and you
5 didn't write it down. 05:43:20

6 A. I think -- I think you've read my report,
7 so I'm not trying to trick you either.

8 Q. Okay. Did you discuss conversion-based
9 autobidding with Mr. Hochman?

10 A. Yes. 05:43:48

11 Q. What did he tell you about
12 conversion-based autobidding?

13 Let me withdraw.

14 You're looking at your report. Is it
15 fair to say anything Mr. Hochman told you about 05:44:40
16 conversion-based autobidding is reflected in your
17 report?

18 A. No, it's not.

19 MR. LEE: If you need to consult your
20 report or -- to refresh your recollection about 05:44:53
21 Mr. Santacana's question, feel free to do that. I
22 don't think he's limiting you.

23 THE DEPONENT: I don't know that I
24 identify in my report where Mr. Hochman and I spoke
25 about conversion-based autobidding. 05:45:27

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1 Q. (By Mr. Santacana) But you know that you 05:45:33

2 did?

3 A. Yes.

4 Q. Did you document your conversation with

5 Mr. Hochman about conversion-based autobidding in 05:45:40

6 any way?

7 A. Any -- any documentation about -- from

8 any of my discussions with Mr. Hochman is -- is in

9 my report. I didn't -- I don't have any other

10 documents besides my report. 05:46:03

11 Q. Okay. Did you rely on your conversation

12 with Mr. Hochman and what told you about

13 conversion-based autobidding in rendering your

14 opinions?

15 A. I mean -- I mean, yes. And to the extent 05:46:21

16 that they would have flown -- flowed, not flown --

17 flowed into my calculations, I would have

18 identified that in my report.

19 But I can't see where they did

20 specifically flow into my calculations. So I 05:46:52

21 didn't -- I don't know that I have a specific cite

22 back to that discussion, that portion of my

23 discussion with Mr. Hochman.

24 Q. Maybe I misunderstood.

25 But are you saying that yes, you did rely 05:47:09

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1 on what Mr. Hochman told you about conversion-based 05:47:12
2 autobidding in rendering your opinions; but no, you
3 did not document where you made that reliance --

4 MR. LEE: Objection.

5 Q. (By Mr. Santacana) -- for what he told 05:47:24
6 you?

7 MR. LEE: Objection. Mischaracterizes
8 his testimony.

9 You can answer again.

10 THE DEPONENT: No. What I'm saying is, 05:47:29
11 to the extent we had a conversation on
12 conversion-based autobidding, I don't have any
13 other documents besides my report.

14 To the extent that it was -- it was -- it
15 would be necessary to document that in my report, I 05:47:47
16 would only see it being -- as being necessary to
17 document in my report if it flowed into my
18 calculations.

19 I don't -- I don't know specifically that
20 that discussion would flow directly into my 05:48:08
21 calculations, so I don't know that -- I don't know
22 if I have a cite in my report that would represent
23 that discussion.

24

■

[REDACTED]

[REDACTED]

5 Q. Was your understanding of that [REDACTED]

[REDACTED] informed at all

7 by your conversations with Mr. Hochman?

8 A. As I'm sitting here, I cannot recall if

9 Mr. Hochman and I talked specifically about the

10 [REDACTED] in this case. I can't -- I can't recall 05:49:50

11 that I did speak to him specifically about

12 [REDACTED]

13 Q. I appreciate that. My question was a

14 little different, which is, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 As it relates to that specific document

24 for that specific purpose, I don't recall if I

25 talked to him specifically about that or not. 05:50:45

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1 Q. What did Mr. Hochman tell you about 05:50:48
2 conversion-based autobidding?

3 A. I -- I don't remember specifically what
4 he told me versus what I've learned in -- in the
5 case. 05:51:00

6 Q. What do you mean?

7 A. Well, there are -- there is information
8 on conversion-based autobidding in documents in the
9 case.

10 Q. Are you sure about that? 05:51:18

11 A. I believe -- yes, I believe that there
12 are.

13 Q. Have you cited those documents?

14 A. To the extent that I would have relied
15 upon them, yes, I would have cited them. 05:51:31

16 Q. So if none of the documents that you
17 cited contain the phrase "conversion-based
18 autobidding," is it fair to say that none of the
19 documents you cited informed your understanding of
20 conversion-based autobidding? 05:51:54

21 A. That would be fair to say, I think.

22 Q. And if the only document that you cited
23 that contains that phrase is the ChromeGuard study
24 document, and apart from that, your understanding
25 came from your conversations with Mr. Hochman, is 05:52:14

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1 it fair to say that I cannot tell from your report 05:52:17
2 what you learned about conversion-based
3 autobidding?

4 A. I don't know the answer to that. I'd
5 have to read my entire report, which I'm happy to 05:52:41
6 do right now, to answer that question.

7 Q. Well, I can tell you that it does not
8 define the term.

9 A. Are you asking me a question?

10 Q. Do you disagree? 05:53:04

11 A. What does not define the term?

12 Q. Your report.

13 A. I don't disagree. It may not define the
14 term.

15 Q. And sitting here now, you cannot recall 05:53:22
16 what Mr. Hochman told you about conversion-based
17 autobidding?

18 A. Not specifically, no.

19 Q. Okay. Your Footnote 219 is on page --
20 sorry. Wrong one. Strike that. 05:54:08

21 Take another look at Figure 28.

22 A. Figure 28 in my report?

23 Q. Uh-huh.

24 A. Okay.

25 Q. Okay. Do you see the references in this 05:54:27

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1 ChromeGuard study screenshot to [REDACTED] 05:54:37

2 A. Yes.

3 Q. And to [REDACTED]

4 A. Yes.

5 Q. Do you have an understanding of what 05:54:46
6 those terms mean?

7 A. As I'm sitting here, I don't. I don't
8 recall what those terms mean.

9 Q. A little higher there, there's a term

10 [REDACTED] 05:55:14

11 A. Yes.

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19 Q. Okay. Is there any basis for your

20 conclusion that user behavior with respect to 05:56:40

21 advertising on the Web is analogous to user

22 behavior with respect to advertising on mobile

23 devices?

24 [REDACTED]

[REDACTED]

05:57:05

1 Q. Yes. 05:57:07

2 [REDACTED]

3 Q. What's the basis?

4 [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

18 Q. Okay.

19 MR. LEE: I think we need another break

20 soon. How are you holding up, Mike? 05:58:20

21 THE DEPONENT: Well, I mean, it feels

22 like somebody turned the heat on in here. To be

23 honest, it feels a little unfair.

24 MR. SANTACANA: Okay. We can take a

25 break. 05:58:32

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1 THE VIDEOGRAPHER: This marks the end of 05:58:36
2 Media No. 6. Off the record. The time is 5:58.
3 (Recess taken.)
4 THE VIDEOGRAPHER: This marks the
5 beginning of Media No. 7 in the deposition of 06:16:15
6 Michael Lasinski. We're back on the record. The
7 time is 6:15.
8 Q. (By Mr. Santacana) Mr. Lasinski, I want
9 to call your attention to your "Actual Damages"
10 opinion. 06:16:30
11 A. Okay.
12 Q. And just flip to that section of your
13 report.
14 MR. LEE: It's 47.
15 THE DEPONENT: Yup. 06:16:47
16 Q. (By Mr. Santacana) All right. So as we
17 discussed earlier, you determined actual damages as
18 a function of the payments necessary to incentivize
19 a class member to knowingly surrender the choice to
20 keep the activity on their mobile apps private, 06:17:03
21 right?
22 A. That is correct, yes.
23 Q. Do you agree or disagree with Dr.
24 Knittel -- I was informed it's "Knittel."
25 A. Okay. 06:17:19

1 MR. LEE: That changes everything. 06:17:21

2 Q. (By Mr. Santacana) Do you disagree with
3 Dr. Knittel that economic damages should measure
4 the difference between the plaintiffs' economic
5 position if the harmful event had not occurred and 06:17:27
6 the plaintiffs' actual economic position?

7 A. I believe that that's accurate.

8 Q. And just to be clear again on the limits
9 of your opinion, you did not attempt to measure any
10 emotional distress damages, right? 06:17:52

11 A. My -- my understanding of what's
12 necessary here is for me to calculate what is an
13 appropriate price paid to incentivize an individual
14 to knowingly surrender the choice to keep that app
15 activity private. 06:18:24

16 So when I think of that, I think of,
17 you know, what -- what would -- what would an
18 appropriate price be for someone to give up a peace
19 of mind. In other words, if I don't know if I'd
20 call it emotional distress, but I think of it more 06:18:37
21 as like peace of mind for giving up that
22 information.

23 Q. So I just want to be clear. The analysis
24 you conducted here is an economic analysis, right?
25 You're measuring economic damages? 06:18:51

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1 A. Monetary damages, correct. Yes. 06:18:54

2 Q. Okay. So if we accept the premise that

3 that and emotional distress damages are different

4 things, would you agree with me that you're not

5 opining on what emotional distress damages would 06:19:06

6 be?

7 A. If -- if you accept the premise that

8 those are different things, then yes.

9 Q. Okay.

10 A. I would agree with that. 06:19:16

11 Q. Are there any other forms of actual

12 damage that you attempted to measure other than

13 what is in your report?

14 A. No, I did not. Nothing more than what is

15 in my report. 06:19:29

16 Q. You did, for example, attempt to measure

17 the cost to class members of the risk of identity

18 theft or some other privacy risk?

19 A. That is correct. I did not.

20 Q. And you did not attempt to measure the 06:19:42

21 cost of a raised risk of data leaks from a data

22 breach?

23 A. That -- that is correct. I did not

24 calculate that.

25 Q. Okay. So -- 06:19:57

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1 A. Well -- 06:20:00

2 Q. Go ahead.

3 A. Now, just to be clear, to the extent that
4 people are worried about that, I believe that that
5 is captured in the \$3 here. 06:20:10

6 And so to me, that calculation -- a
7 market-based price captures what a person would be
8 worried about. And those are two things that make
9 sense for a person to be worried about if they're
10 giving up more data. 06:20:24

11 Q. Fair. Fair point.

12 So did you do anything to analyze the
13 named plaintiffs' testimony to determine whether
14 they indicated what a market price would be for
15 their data? 06:20:49

16 A. I did not look at the named plaintiffs'
17 testimony as it related to that.

18 Q. You would agree with me that the best
19 measure of a market price or a fair price here --
20 by the way, "market price" is a term you just used. 06:21:13
21 Is that different from "fair market value" and
22 "fair price," which are terms we described before?

23 A. I think that -- I think "fair price" is
24 different than -- from "fair market value."

25 So I think -- I think, thinking about 06:21:26

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1 this, as far as an appropriate price like I 06:21:29
2 described it in my report is the way to -- the way
3 to say it.

4 I may slip up every once a while because
5 I use "market value" and "fair market value" in 06:21:37
6 other contexts. But I'm using what I'm -- what I'm
7 talking about here in my report.

8 Q. Okay. So would you agree with me that
9 the best measure of the fair price in your actual
10 damages opinion is going to be prior economic 06:21:50
11 transactions that are similar to the one that
12 you're hypothesizing?

13 A. Based on data available in this case,
14 yes, I agree that that is -- like the study that
15 I'm relying upon in this case. 06:22:13

16 Q. You are aware that Google Analytics for
17 Firebase is not the only conversion tracking or
18 analytics product on the market for mobile apps?

19 A. I am aware of that, yes.

20 Q. There are others that are produced and 06:22:27
21 serviced by companies other than Google?

22 A. That is my understanding, yes.

23 Q. You're aware that sometimes mobile apps
24 will use multiple analytics products in the same
25 app? 06:22:40

1 A. That is consistent with my understanding. 06:22:43

2 Q. So fair to say at least some of the class
3 members in this class, for example, used apps that
4 used both Google Analytics for Firebase and a
5 third-party analytics solution? 06:22:58

6 A. I don't know if that's fair to say or
7 not. That may have happened.

8 Q. Well, it's a class of 90 million people.
9 Do you have any reason to doubt that that -- some
10 people in the class are in that category? 06:23:14

11 A. No, I do not.

12 Q. People in that category who used an app
13 that used both Google Analytics for Firebase and,
14 let's say, AppsFlyer as an example of a third-party
15 analytics solution, is it fair to say that those 06:23:32
16 people have entered into a transaction with the app
17 that uses both of those analytics solutions, they
18 are giving up data in exchange for using the app?

19 And assume for me that the app is
20 disclosing it, so it is not hidden to them. 06:24:05

21 A. So the app -- the app is disclosing that
22 they're giving up their data in exchange for using
23 the app?

24 Q. Yeah. So, I mean, you use a mobile
25 phone, right? 06:24:21

1 A. Yes, I do. 06:24:22

2 Q. Sometimes you download an app, you
3 install it, you open it up, it says "click here to
4 agree to our privacy policy and terms of use," you
5 say yes, and now you use the app, right? 06:24:30

6 A. Correct.

7 Q. So assume for me that some of those
8 privacy policies disclosed the use of analytic
9 solutions from Google, from other companies,
10 sometimes more than one at once, sometimes just 06:24:41
11 Google, sometimes other companies. Okay?

12 Assume that for the moment.

13 A. I think -- I think I'm following you.

14 Q. With respect to the data generated in
15 those apps that do that, isn't the user agreeing to 06:24:56
16 give up their analytics data in exchange for using
17 the app?

18 As an economic matter, isn't that the
19 transaction that's occurring?

20 A. To -- to that specific app? 06:25:22

21 Q. Uh-huh.

22 A. If -- if -- I think I'm following you.
23 But if it was disclosed and it said you're giving
24 up your data, and the user downloaded the app and
25 used it, then yes. They are giving their data -- 06:25:36

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1 they are allowing that data to use their -- they 06:25:40
2 are allowing that app to use their data in exchange
3 for using the app.

4 I mean, I hope you're not trying to trick
5 me here. You're just telling me, like, assume 06:25:50
6 these four facts.

7 Q. Yes. I'm not trying to trick --

8 A. And I'm just assuming them.

9 Q. You should.

10 A. Okay. 06:25:59

11 Q. I mean, I could show a privacy policy
12 from a random app if you want, but I think you can
13 just assume it, and it's easier that way.

14 MR. LEE: Is WAA on or off in this
15 scenario? 06:26:09

16 MR. SANTACANA: I didn't specify for that
17 user. That's where we'll go now, next.

18 MR. LEE: Right. Okay. Well, then, no
19 objection so far.

20 Q. (By Mr. Santacana) So now imagine the 06:26:17
21 same user we were just talking about has a Google
22 account, and their sWAA is set to off.

23 A. Okay.

24 Q. And they install this app on their
25 Android phone. The app says we use 06:26:32

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1 Google Analytics and we use this other third-party 06:26:36
2 as well for analytics. Okay?
3 With me so far?
4 A. I think so.
5 Q. So this SWAA-off user, according to the 06:26:44
6 plaintiffs, has indicated that they do not want
7 that analytics data to be used by Google, but
8 there's no such restriction on the use of the
9 third-party analytics service by the app. Right?
10 That's not a claim the plaintiffs are making; fair 06:27:04
11 to say?
12 A. I think I'm following you.
13 Q. Isn't the user's decision in that moment
14 to use the app a fair indication of how much the
15 user values the data in question, given that they 06:27:24
16 would be providing the same data, or the app would,
17 to the two different analytics providers?
18 MR. LEE: Objection to form.
19 THE DEPONENT: No.
20 Q. (By Mr. Santacana) Why not? 06:27:36
21 A. Well, one person may -- one person may,
22 in this hypothetical, choose to allow the app to
23 use their private information, knowing certain
24 things about the app, knowing certain things about
25 how the app would that data. 06:27:57

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1 But then they could still have a deal 06:27:59
2 where they don't want someone else to use that
3 information. And if they have a deal, in this
4 case, with Google, for example, they may say no,
5 that information is not something that I'm willing 06:28:11
6 to share with Google.

7 And there would be a price -- before I
8 would share that information with Google, there
9 would be a price that someone would charge for that
10 information. 06:28:24

11 Q. So it's possible for the same SWAA-off
12 user to, in this hypothetical, demand a price from
13 Google for their analytics data but no price from
14 the app or the third-party analytics provider that
15 the app also uses. Fair? 06:28:41

16 A. No, that's not -- that's not fair.
17 They -- they are -- they are getting value.

18 Q. By using the app?

19 A. Correct.

20 Q. Okay. So when this user chooses to use 06:28:51
21 the app, there is a bargain with the app where they
22 agree to the app's usage of analytics providers in
23 exchange for using the app and no money, right?

24 A. This is the hypothetical that you're
25 posing to me. So you're -- you're saying "right," 06:29:21

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1 but you telling me to assume that. So yes. 06:29:24

2 Q. Well, but -- right.

3 So my curiosity is about your answer

4 where you said that it's not possible that the same

5 sWAA-off user in this hypothetical will demand a 06:29:37

6 price from Google but not from the app or from the

7 third-party analytics provider.

8 And you said the reason it's different is

9 because they are getting value out of the app.

10 So now I'm just trying to put the value 06:29:48

11 of the app into the hypothetical.

12 Does that make sense?

13 A. I think so.

14 Q. So what is the difference, as an economic

15 matter, between the user providing their data to 06:30:05

16 Google and the user providing their data to a

17 third-party analytics provider that is not Google?

18 A. So, again, that third -- that

19 third-party, depending on -- depending on the

20 disclosure, may believe that they're getting a 06:30:35

21 value for the app.

22 Like, for example, I know if I sign up to

23 some of these policies, sometimes they won't charge

24 me for the app. It would be like --

25 Q. Right. 06:30:53

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1 A. -- or it's ten bucks if I want to 06:30:53
2 download the app. Well, I didn't get any money,
3 but I saved \$10.

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4           So to me, when you saved $10, you'd say,  
5 wait, okay, I got value for my data.                                06:31:05
```

6	Q. Yes.
---	---------

7 A. And so I don't -- economically, it's
8 similar.

9 And in this case, when you brought Google
10 into -- into the equation, they signed up for a 06:31:21
11 privacy policy with Google knowing that they signed
12 that policy, in this case, sWAA off. And my
13 understanding is the expectation of that is they
14 would not collect, save, or use that data then.

15 Q. So what I'm focused on is the language in 06:31:47
16 your paragraph 130 where you say that you're trying
17 to identify the payment necessary to incentivize
18 the individual "to knowingly surrender the choice
19 to keep activity on mobile apps private and allow
20 an organization to track app activity data." 06:32:06

21 Was your task here generic as to who
22 receives the data, or was it specific as to Google?
23 And is there a difference?

24 A. Here, I think it is specific as to

25 Google. And certainly, there could be -- 06:32:30

1 certainly, there could be a difference in what 06:32:38
2 someone is willing to accept for providing the
3 information.

4 Q. Depending on who they are providing it
5 to? 06:32:48

6 A. That -- yes.

7 Q. So the same user may demand \$3 per device
8 from Google, but nothing from AppsFlyer, for
9 example? That's possible --

10 A. Well -- 06:33:02

11 Q. -- as an economic matter?

12 A. I don't know that that's possible. I
13 mean, at -- at the end of the day -- at the end of
14 the day, when people share their data, oftentimes
15 they are assuming that they're going to get value 06:33:15
16 for that.

17 So -- so you say you're getting nothing,
18 but if you provide -- if you go through that policy
19 that you're talking about -- if you go through that
20 policy that you're talking about with a third-party 06:33:30
21 app that uses that service, they got value for
22 that.

23 I -- in your hypothetical, I think what
24 you're saying is, well, if that -- that analytics
25 company called them up and said, "Hey, give me your 06:33:45

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1 data," I can't imagine that there would be anyone 06:33:48
2 that would just say, "Here, here's some free data."
3 Q. I see. Fair enough. It's not quite what
4 I was imaging, but that's helpful.
5 I guess where I'm confused is that you 06:34:00
6 are attempting to measure the difference between
7 that class member's economic position in real life
8 and in a world where the plaintiffs' view of SWAA
9 had been honored, right?
10 What is the difference in their economic 06:34:56
11 position; that's how you're determining actual
12 damages?
13 A. I think you're saying -- yeah, where it
14 was taken for free, for nothing.
15 Q. Right. Or against -- allegedly against 06:35:13
16 their will according to their SWAA setting?
17 A. That is correct. That's -- that's what
18 my understanding is.
19 Q. But the exact same data could have been
20 taken by a third-party analytics company with whom 06:35:24
21 the user has no relationship, and the user accepted
22 that in exchange for using the app?
23 A. Under your scenario --
24 Q. Yes.
25 A. -- yes. 06:35:39

1 Q. Do you see any contradiction there? 06:35:40

2 A. No.

3 Q. Why not?

4 A. Because, again, for -- for a number of

5 reasons. 06:35:47

6 First, a user can enter into a
7 transaction with one entity and another entity for
8 that exact same data and charge different amounts.
9 That's the user's prerogative. That happens all
10 the time in transactions. 06:36:06

11 You -- you seem to be keep indicating
12 that they gave it away for free, but they did
13 not --

14 Q. Well, for the app.

15 A. Yeah. But the app is not free. 06:36:16

16 Q. Go ahead.

17 A. The app might be free, but they got value
18 for that. And so it's not -- it's -- it's a
19 transaction. It's -- it's a bargain. It's a
20 transaction. And there's a monetary value for 06:36:35
21 being able to use an app.

22 Q. How do you measure that value?

23 Or do you, in this case, measure that
24 value?

25 A. Now, what value are you talking about 06:36:51

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1 there? 06:36:53

2 Q. The monetary value for being able to use
3 an app.

4 A. I have not measured it in this -- in this
5 case. I mean, I know one way that way people 06:37:02

6 measure those such things is some apps -- some apps
7 have free versions. Some apps will give you
8 additional features, and they'll make -- charge you
9 more. Some apps just charge right out of gate.

10 So how do you measure the value -- how do 06:37:17
11 you measure the value of the app? You can look to
12 market transactions, just like what I did here is
13 look to a market-based transaction.

14 Q. Well, the market-based transaction you
15 looked at here is very different in kind than the 06:37:33
16 market-based transaction that's happening every day
17 when users download apps, agree to privacy policies
18 that disclose analytics services, and use the app
19 and get that value.

20 And I guess what I'm trying to get at is, 06:37:48
21 why didn't you consider that in your analysis of
22 market transactions?

23 Every day, there are probably of hundreds
24 of millions of agreements entered into between end
25 users and app developers where the user agrees to 06:38:11

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1 give up data to analytics in exchange for using the 06:38:15
2 app.

3 Why didn't you take those market
4 transactions into account when looking for a
5 comparable? 06:38:24

6 A. For two -- for two reasons.

7 One is, I have a very good comparable
8 here with -- with Ipsos Screenwise, as well as the
9 other ones that I talked about here. You're --
10 you're talking about going out and analyzing 06:38:46
11 hundreds of millions of transactions, which would
12 cost a significant amount of money and I'm not sure
13 that would end up with any better information than
14 what I had here.

15 And in those cases, you would have to 06:39:02
16 make assumptions about how each individual valued
17 the app that they downloaded and gave up their data
18 for. That is -- in my opinion, as I sit here
19 today, that would probably be a less valuable
20 exercise than relying upon what I did -- than what 06:39:25
21 I did here.

22 I would say it would rely -- would result
23 in less reliable data than what I did here.

24 Q. In the negotiation that you posit in your
25 actual damages opinion, you theorize that Google 06:39:52

1 and the user would reach the amount of \$3. The 06:39:59
2 user gives up certain data and, in exchange,
3 Google Pays \$3, and you believe that's the fair
4 price for the certain data, right?

5 A. Per device. 06:40:12

6 Q. Per device. That's right.

7 Did you take into account in analyzing
8 this hypothetical transaction between Google and a
9 user the restrictions that there would be on
10 Google's use of the data the user is giving up or 06:40:33
11 the degree to which it is restricted, if at all?

12 MR. LEE: Objection. Form.

13 Q. (By Mr. Santacana) I'll come back to it.

14 Let me ask you this: You understand
15 Google doesn't personalize ads with sWAA-off data, 06:41:03
16 right?

17 A. That is my understanding, yes.

18 Q. What it does do, according to the
19 plaintiffs and Mr. Hochman, is recordkeeping
20 surrounding advertising. It takes account of the 06:41:17
21 ads that it shows, the ads that get clicked on, and
22 conversions that are made, even if the user has
23 sWAA off.

24 That's the claim in the case, right?

25 A. Well, that's certainly part of the claim. 06:41:35

1 That's correct. 06:41:37

2 Q. But it's not the case that Google does
3 personalizing of advertising or targeting with that
4 same information, right?

5 That's your understanding? 06:41:44

6 A. That -- for sWAA-off --

7 Q. Right.

8 A. -- users. That is -- that is correct.

9 Q. For sWAA-on users, it can personalize
10 advertising, right? 06:41:57

11 A. For sWAA-on -- I believe that it can,
12 yes. I'm not 100 percent sure. I guess it would
13 depend on the -- on the particular user. If the
14 user had GAP off, then no, I guess it couldn't.

15 Q. Does your hypothetical \$3 fair price take 06:42:14
16 into account that distinction, that Google, even
17 though it's getting the data from that user, can
18 only use it for this accounting purpose. It cannot
19 use it to personalize ads?

20 Is that a restriction on the use of the 06:42:30
21 data that you've taken into account in arriving at
22 your \$3?

23 A. Yes.

24 Q. So if Google could use it for
25 personalization, presumably the \$3 figure would be 06:42:38

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1 higher? 06:42:43

2 A. It certainly could be higher. That is
3 correct.

4 Q. Okay. And if Google couldn't use it for
5 anything, it was just, "Here's my data," and then 06:42:53
6 Google just lights it on fire and throws it in the
7 ocean, then presumably the price would be lower
8 than \$3?

9 I'm just trying to understand the
10 dynamics of this transaction. 06:43:07

11 A. I guess I'm really not understanding,
12 like -- like, if you give someone your data, and
13 they light it on fire and send it into the ocean --
14 and send it into the ocean.

15 Q. Then you'd probably agree to that for 06:43:20
16 less money?

17 A. I -- that is possible. I am not
18 100 percent sure. That seems like a weird
19 hypothetical that I can't really fathom anyone
20 would enter into, but -- 06:43:36

21 Q. No pun intended.

22 A. -- possible.

23 Q. I guess what I'm trying to get at is, it
24 seems to me, at least, that in this transaction you
25 hypothesize, one of factors that would drive the 06:43:51

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1 price up or down is what Google's going to do with 06:43:54

2 the data, right?

3 MR. LEE: Objection to form.

4 Mischaracterizes.

5 THE DEPONENT: I -- I mean, I don't -- I 06:44:07

6 don't necessarily think that would drive it up or

7 down, what Google is going to do to the data.

8 I think that what I'm talking about here

9 is you need to incent someone to part --

10 incentivize someone to part with their data. And 06:44:25

11 to part with that data is what I'm talking about

12 here.

13 Q. (By Mr. Santacana) Well, okay. But a

14 moment ago, you said if Google is going to use it

15 for personalization, that would drive the price up? 06:44:35

16 A. It could. You're asking about a

17 hypothetical. It could -- it could drive it up.

18 I -- I'm trying to answer your questions.

19 I did a specific analysis based on what

20 actually happened. That didn't actually happen. 06:44:47

21 But...

22 Q. Well --

23 A. You're asking me about hypotheticals, and

24 I'm trying to answer them as best I can.

25 Q. Your opinion attempts to characterize 06:44:55

1 what a user who does not exist would be willing to 06:45:01
2 accept in dollars in exchange for data that in real
3 life was collected and used by Google, right?

4 That's your task here?

5 A. Well, I think that the users do -- I 06:45:16
6 mean, there's -- there's a large class of users
7 that do exist.

8 Q. I'm sorry.

9 A user who exists but who didn't actually
10 have a chance to have this negotiation with Google, 06:45:24
11 right?

12 A. That is correct.

13 Q. And you're trying to figure out what
14 would it take to get them to part with the data?

15 A. That -- that's what I'm calculating here 06:45:35
16 is what it would take for them to part with the
17 data.

18 Q. So if Google says, I'll pay you \$3, and
19 then I'm going to publish the data on Reddit, okay,
20 isn't that a different deal than I'll give you \$3, 06:45:49
21 but I'm only going to use it for advertising and
22 bookkeeping purposes?

23 MR. LEE: Objection. Incomplete
24 hypothetical.

25 Q. (By Mr. Santacana) It matters what 06:46:08

1 Google is going to use it for? 06:46:09

2 A. To some -- to some extent, yes, that
3 makes sense.

4 Q. Okay. So did you describe in your report
5 or come to any reasoning about what impact Google's 06:46:16
6 use of the data would have on the price, this \$3
7 price?

8 MR. LEE: Asked and answered.

9 THE DEPONENT: I mean, again, I know how
10 they're -- I know how they're using the data. I 06:46:33
11 have, obviously, the information that was provided
12 to me.

13 So yes, I -- I looked at that. I looked
14 at that, and I compared it to the Ipsos study.

15 Q. (By Mr. Santacana) Right. 06:46:47

16 A. And then I determined that a \$3 price was
17 appropriate per device --

18 Q. The Ipsos study --

19 A. -- in this case.

20 Q. I'm sorry. Go ahead. 06:46:53

21 A. For this case.

22 Q. The Ipsos study terms allow Google to use
23 the participants' data for personalized
24 advertising, right?

25 A. That is correct. 06:47:08

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1 Q. And those terms allow Google to join the 06:47:08
2 data with other data Google has about that person,
3 right?

4 A. That is correct. Yes.

5 Q. Okay. The terms of the transaction that 06:47:16
6 you're hypothesizing in paragraph 130, 131 and 132
7 would not permit that, right?

8 A. Well, that -- that is my assumption, yes.
9 No, it would not. They do not -- they do not get
10 personalized ads right now, so I would not expect 06:47:49
11 that they would expect that they would all of a
12 sudden start receiving personalized ads. That's
13 correct.

14 Q. So did you adjust the Ipsos price
15 downward to reflect that greater restriction on the 06:47:59
16 use of the data?

17 A. No, one wouldn't -- I would not need to
18 do that, no.

19 Q. Why not?

20 A. Because here, again, in the Ipsos -- we 06:48:05
21 talked about this earlier.

22 In Ipsos study, we are talking about
23 willing participants versus unwilling participants.

24 So the WAA-off/swAA-off users are
25 unwilling participants in this. 06:48:21

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1 They are collecting, meaning Google is 06:48:25
2 collecting, data that participants believe --
3 participants believe that is -- that participants
4 have gone through the steps that indicate that that
5 data is important to them, and they do not want it 06:48:52
6 shared. That's not the case in the Ipsos study.

7 So making an additional adjustment to
8 what I've made, where here, we're talking about the
9 device, specifically the device, and Ipsos pays \$3
10 for the device but then pays -- but then pays 06:49:12
11 additional dollars on top of that for some of the
12 information that you were talking about earlier, I
13 don't believe that I need to make any adjustments,
14 because here we're talking about device to device.

15 Q. I don't understand your answer. 06:49:41

16 The transaction in Ipsos gives Google a
17 wider latitude for what it can do with the data
18 than the transaction you're hypothesizing.

19 Did that play any role in the amount of
20 money that you ultimately concluded this 06:49:55
21 hypothetical transaction would arrive at as a fair
22 price?

23 A. I don't know how to answer that other
24 than what I've answered before. In this -- in the
25 Ipsos study, Google pays market participants in a 06:50:12

1 number of different ways, not just on a -- not just 06:50:19
2 on a per device.

3 They pay money for their Web browser.
4 They pay money for devices. They pay money for
5 using a router. They pay money for all these other 06:50:31
6 things.

7 But once you get down to the device
8 level, you're -- what -- in my opinion collecting
9 similar information. And that similar -- and that
10 similar information, the best market data point is 06:50:45
11 the \$3 -- the \$3. They've already been compensated
12 for those -- that other use of the data.

13 Q. Okay. I need you to listen carefully to
14 this question, because I understand your answer,
15 but then my question's different. 06:51:05

16 Did the difference in the terms of the
17 transaction regarding what Google could do with the
18 data, did it play a role in the amount of money you
19 ultimately concluded the hypothetical transaction
20 in this case would arrive at? 06:51:23

21 Did it play a role? I just want to know.

22 A. Well, I think I just answered that with
23 what I just said, but --

24 Q. Well, what you said summarized your whole
25 opinion. 06:51:34

1 A. -- yes. 06:51:34

2 Q. I want to know if this was one of the
3 factors that you considered, and, if so, what role
4 it played.

5 A. I -- I just said. But yes, it -- it is 06:51:42
6 one of the things that I considered in my -- in my
7 analysis.

8 Q. And what role did it play? Did it drive
9 the price up or did it drive it down?

10 MR. LEE: Objection to form. 06:51:57

11 THE DEPONENT: Well, as we know, in -- in
12 this case, they -- I am assuming that these users
13 will get paid less than what they get paid in the
14 Ipsos study.

15 So there are -- there certainly is a 06:52:09
16 lower amount of compensation that I put to a user
17 relative to what they would get in the Ipsos study.
18 And so that -- yes, that is one of things that I
19 considered when I was selecting the \$3 in this
20 case. 06:52:27

21 Q. (By Mr. Santacana) How much lower did it
22 drive the price?

23 A. I did not quantify specifically how much
24 lower that particular aspect drove the price.

25 Q. Did you quantify in your report or in 06:52:44

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1 some other way how much any factor in particular 06:52:47
2 affected the price?
3 A. Yes.
4 Q. Where?
5 A. I mean, it's in -- it's what I talk about 06:53:00
6 in my "Actual Damages" --
7 Q. Show me.
8 A. -- section.
9 So, again, ultimately what I'm -- what
10 I'm selecting here is mobile phone price, \$3, and 06:53:23
11 tablet price of \$3. I'm not including the router.
12 I'm not including the browser. I'm not including
13 the \$2 bonus. I'm not including the hundred
14 dollars for installing a router.
15 Any of those -- any of those additional 06:53:43
16 compensations -- compensation that is paid to a
17 user, I'm not including that.
18 Q. My question was a little different.
19 Let me -- let me try and ask it a
20 different way. 06:53:58
21 In any negotiation, there are factors
22 that will drive the price up and factors that will
23 drive it down, right?
24 A. That -- yes.
25 Q. Fair to say? 06:54:12

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1 A. That is correct. 06:54:12

2 Q. Okay. So as you are trying to determine
3 how to incentivize a class member to part with the
4 data, there will be factors that come into that,
5 right? 06:54:21

6 A. I -- I think -- I think you're talking
7 about any transaction, whether or not it's this
8 transaction or any other transaction.

9 Q. Did you quantify any specific factor as
10 to its impact on the ultimate price for this 06:54:36
11 transaction, or was it more of a totality of the
12 circumstances-type conclusion about the \$3?

13 MR. LEE: Asked and answered.

14 Q. (By Mr. Santacana) I mean, I don't think
15 you did. I don't think there's a table that says 06:54:55
16 this factor, minus \$1; this factor, minus 12 cents.
17 That's not in here.

18 I'm just asking you if it's somewhere
19 else or if I misread it.

20 THE DEPONENT: No, if you're asking if 06:55:04
21 there's a table like that that's in my report, it's
22 not in my report, as you know.

23 And I don't have any similar table
24 somewhere else.

25 Q. (By Mr. Santacana) How did you calculate 06:55:13

1 the \$3 payment per device? 06:55:14

2 A. Again, as we -- we talked about, I looked
3 at this -- this analysis, the Ipsos study, as well
4 as the other studies that I talk about in my actual
5 damages. I determined, based on the comparability 06:55:36
6 of specifically the Ipsos study as it relates to
7 mobile phones and tablets, so devices, of \$3 as --
8 I believe that that's an appropriate one-time
9 payment per device based on the information that
10 was available to me here. 06:55:58

11 Q. Why isn't the \$3-per-device price that
12 you arrived at higher than what the Ipsos study
13 pays participants?

14 You say the Ipsos study is willing
15 participants. This is unwilling -- 06:56:31

16 A. Yes.

17 Q. -- participants.

18 So shouldn't these unwilling participants
19 get paid more?

20 MR. LEE: Asked and answered. 06:56:38

21 THE DEPONENT: I think I answered that
22 before. But I do believe that this is a
23 conservative value for those -- for the Ipsos
24 studies.

25 Q. (By Mr. Santacana) What does 06:56:45

1 "conservative" mean in that sentence? 06:56:45

2 A. It means that it could be -- it could, in
3 fact, be higher. But I think that this is an
4 appropriate price to incentivize based on what I
5 said -- based on what I said before, to incentivize 06:56:55
6 those users to part with their data.

7 Q. Would \$4 be an appropriate price?

8 MR. LEE: Objection to form.

9 THE DEPONENT: I -- I did not do an
10 analysis of \$4, so I don't know the answer to that. 06:57:06

11 Q. (By Mr. Santacana) What do you mean you
12 did not do -- you did an analysis and came up with
13 a number. So presumably, you considered all
14 numbers that exist, and you arrived at one of them
15 and said, "This is the answer." 06:57:16

16 So I'm just saying, why did you rule out
17 \$4?

18 A. Ultimately, I've got a market transaction
19 here that shows \$3.

20 Q. Per month, which you deviated from? 06:57:25

21 A. Correct.

22 Q. So why didn't you say \$4?

23 A. Because --

24 MR. LEE: Asked and answered.

25 Go ahead. 06:57:37

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1 THE DEPONENT: Because based on the 06:57:37
2 totality of the information available to me, as we
3 talked about earlier in the deposition, I think
4 that -- I think that \$3 is an appropriate amount.
5 A one-time payment of \$3 is an appropriate amount. 06:57:48
6 Q. (By Mr. Santacana) So you would agree
7 with me that \$4 is too much?
8 MR. LEE: Mischaracterizes testimony.
9 THE DEPONENT: Again, I think \$3 is
10 conservative. Could be it higher than \$3? Yes. 06:58:03
11 It could be --
12 Q. (By Mr. Santacana) Could be it lower?
13 MR. LEE: Hold on. Let him finish.
14 THE DEPONENT: Could it be higher than
15 \$3? Yes. No, I do think it could be lower than 06:58:09
16 \$3.
17 Q. (By Mr. Santacana) So \$3 is the lowest
18 number that you could come up with?
19 A. \$3 per device. I don't think that I
20 would come up with a number lower than that. I 06:58:19
21 did -- I would not come up with a number lower than
22 that.
23 Q. Are there members of the class who you
24 would expect would demand more than \$3 if they had
25 the opportunity to engage in this negotiation? 06:58:34

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1 MR. LEE: Calls for speculation. 06:58:42

2 THE DEPONENT: I don't -- I don't know

3 the answer to that. I didn't analyze that.

4 Certainly, I think \$3 is an appropriate price to

5 incentivize the class members to part with their 06:58:58

6 data, as I said.

7 Q. (By Mr. Santacana) Does that mean that

8 there is no member of the class, in your opinion,

9 who would require more than \$3 to be incentivized

10 to part with their data? 06:59:16

11 MR. LEE: Calls for speculation.

12 THE DEPONENT: I don't -- I don't -- I

13 mean, again, I didn't do an analysis of that, so I

14 don't -- I don't know the answer to that.

15 Q. (By Mr. Santacana) Well, you said \$3 is 06:59:24

16 an appropriate price to incentivize the class

17 members.

18 A. That is correct.

19 Q. Doesn't that imply that there can't be a

20 class member who would need \$3.01? Otherwise, your 06:59:32

21 number would be wrong, right?

22 A. I think -- I think if you're -- if you're

23 talking about the precision of \$3 versus \$3.01 --

24 Q. Okay. \$3 versus \$3 trillion. How do you

25 know there isn't a class member who requires 06:59:48

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1 \$3 trillion? 06:59:51

2 MR. LEE: Objection --

3 Q. (By Mr. Santacana) You understand my
4 question, right?

5 MR. LEE: Objection -- hold on. 06:59:54

6 Objection. Mischaracterizes the model.

7 THE DEPONENT: I don't -- I'm not aware
8 of Google offering anyone \$3 trillion for their
9 data.

10 Q. (By Mr. Santacana) But part -- 07:00:08

11 A. But --

12 MR. LEE: Hold on.

13 Q. (By Mr. Santacana) Go ahead.

14 A. But if they did, I -- I would assume that
15 someone would likely take that. 07:00:14

16 Q. So in paragraph 132, you say that the
17 factors that matter are Google's payments,
18 historical payments, for user data; users'
19 willingness to pay to prevent data collection; and
20 research organizations' willingness to pay for data 07:00:32
21 collection.

22 Did you take into account at all what
23 users accept in exchange for data collection? Or
24 is that just implied in the payments Google makes?

25 A. What users accept, I know what users -- I 07:00:53

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1 know at least some set of users -- 07:00:55

2 Q. Okay.

3 A. -- are willing to accept, because I know
4 what's going on in the Ipsos study.

5 Q. Okay. And in your mind, is the Ipsos 07:01:01
6 study representative of all similarly situated
7 users?

8 A. I don't know if it's all similarly
9 situated users, but I do think it's -- it's a good
10 comparable to use in this case. 07:01:22

11 Q. So then I return to my question, which
12 is, how do you know that there aren't some
13 significant chunk of the class -- let's say,
14 privacy fundamentalists -- who would refuse to part
15 with their data at \$3, just flat-out refuse, 07:01:44
16 absolutely not. Not \$4. Not \$5. Maybe \$100.

17 How do you know there aren't people like
18 that in the class?

19 A. Well, if you're asking me if I did a
20 study of the class, I did not do a study of the 07:01:57
21 class. So I think --

22 Q. I'm asking --

23 A. So I think -- I think, when you look at
24 the class as a whole, and you think about what
25 would be appropriate to incentivize class members 07:02:09

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1 to part with their data, the data points that are 07:02:15
2 most important or that are most reliable, based on
3 the information available, are the Ipsos study data
4 points.

5 Q. Do you know what a privacy fundamentalist 07:02:27
6 is?

7 A. Yes.

8 Q. Do you think they would take \$3?

9 MR. LEE: Calls for speculation.

10 THE DEPONENT: I don't know what they 07:02:35
11 would take. I -- I have not surveyed them, as I
12 stated earlier in my case.

13 Q. (By Mr. Santacana) Do you doubt --

14 A. In -- in my testimony, I should say.

15 Q. Do you doubt that there are privacy 07:02:47
16 fundamentalist in this class?

17 A. No, I do not.

18 Q. Is it your opinion that a privacy
19 fundamentalist in this class would accept \$3 in
20 exchange for the at-issue data? 07:02:59

21 MR. LEE: Calls for speculation.

22 THE DEPONENT: I -- I mean, I just can't
23 speculate on that. I don't know the answer to
24 that. I did not do a survey.

25 Q. (By Mr. Santacana) So your opinion on \$3 07:03:09

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1 is meant to capture sort of a population average, 07:03:11
2 conservative floor fair price; is that a fair
3 characterization?

4 A. I think it's a conservative floor,
5 appropriate price for the class -- for the class. 07:03:29
6 Yes, I agree with that.

7 Q. But there may be people in the class who,
8 if they could do it themselves, they'd negotiate a
9 different price, maybe even a very different price?

10 MR. LEE: Calls for speculation. 07:03:45

11 THE DEPONENT: I don't know the answer to
12 that.

13 MR. LEE: Can we get a time check,
14 please?

15 THE VIDEOGRAPHER: Time is running, so I 07:03:52
16 can give an approximation, which is 6 hours and
17 28-ish minutes.

18 MR. LEE: Okay. Thanks.

19 Q. (By Mr. Santacana) Would you accept \$3
20 for the at-issue data? 07:04:01

21 A. No, because I can't be part of the class.
22 So --

23 Q. I said would you, not will you.

24 MR. LEE: Objection to form.

25 THE DEPONENT: I'm not -- I'm not going 07:04:13

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1 to answer what I would personally do or not do. 07:04:14

2 Q. (By Mr. Santacana) Why?

3 A. Because that's not none of your business.

4 That's not part of my report.

5 Q. Well, you're here under subpoena, and 07:04:22

6 it's a perfectly relevant question.

7 Would you accept \$3 in exchange for the

8 sWAA-off data at issue in the case?

9 MR. LEE: Beyond the scope.

10 THE DEPONENT: I'm not -- I'm not going 07:04:34

11 to answer that question. It's not part of my

12 report.

13 Q. (By Mr. Santacana) It doesn't matter if

14 it's part of your report or not. It's a relevant

15 question that goes to your credibility. 07:04:41

16 If you're opining in your report that \$3

17 is a fair price, but you yourself wouldn't accept

18 it, that is relevant.

19 So I'm going to ask it again: Would you

20 personally accept \$3 in exchange for the at-issue 07:04:51

21 data to Google?

22 MR. LEE: Beyond the scope.

23 Q. (By Mr. Santacana) Go ahead.

24 MR. LEE: I just said beyond the scope.

25 THE DEPONENT: I do not think that it's 07:05:01

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1 relevant. 07:05:02

2 Q. (By Mr. Santacana) It's not for you to
3 decide.

4 MR. LEE: It's not for you decide either.

5 THE DEPONENT: It's certainly not for you 07:05:06
6 to decide. I do not think it's relevant. It's
7 beyond of the scope of my report.

8 Q. (By Mr. Santacana) Do you have SWAA on
9 or off?

10 A. Again, that's also -- that's also not 07:05:15
11 part of my report, and that is not relevant.

12 Q. Do you have a Google account?

13 A. None of that is -- that is not relevant
14 here.

15 MR. LEE: This is all beyond the scope. 07:05:25

16 Q. (By Mr. Santacana) Are you refusing to
17 answer?

18 A. I'm refusing to answer questions that I
19 think are beyond the scope of my report.

20 Q. Okay. You understand you're under 07:05:33
21 subpoena, right?

22 MR. LEE: Are you trying to intimidate
23 the witness? I mean, he's already told you his
24 position. You've already told him he's under
25 subpoena. He's aware of that. He's -- he's been

07:05:45

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deposed before. He's told you his position.

07:05:47

2	Ask another question.
---	-----------------------

3 Q. (By Mr. Santacana) Do you understand
4 you're under subpoena?

A. I understand that there's a subpoena in
this case, yes.

07:05:55

7 Q. Did you review it?

8 A. Yes, I did.

9 Q. Was it limited in scope for subject
10 matter? 07:06:01

11 A. I -- you would have to show me the
12 subpoena again. I don't -- I don't recall.

13	Q. Okay.
----	----------

14 MR. SANTACANA: I pass the witness.

15 MR. LEE: Okay. Let's take a break. 07:06:17

16 THE VIDEOGRAPHER: Off the record. The
17 time is 7:05.

18	(Recess taken.)
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19	THE VIDEOGRAPHER: This marks the	
20	beginning of Media No. 8 in the deposition of	07:30:52
21	Michael Lasinski. We're back on the record. The	
22	time is 7:30.	

23

24

25 | // // // // 07:31:00

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1 EXAMINATION 07:31:00

2 BY MR. LEE:

3 Q. Good afternoon, Mr. Lasinski. Again, my

4 name James Lee for Boies Schiller. And I just have

5 a few questions for you. Okay? 07:31:07

6 A. Okay.

7 Q. All right. Earlier today, you testified

8 that you understood ChromeGuard to relate [REDACTED]

9 [REDACTED]

10 [REDACTED] 07:31:16

11 Do you remember that?

12 A. Yes.

13 Q. Here in this case, however, we're talking

14 about situations where an advertiser bids on a

15 conversion that is specifically tracked by 07:31:26

16 Google Analytics for Firebase.

17 Do you understand that?

18 A. Yes.

19 Q. And if that's the case, is it even

20 possible for another third party to track a 07:31:33

21 Google Analytics for Firebase conversion?

22 A. My understanding is it's not.

23 Q. I think you mentioned this earlier in the

24 day, but just to make sure that we have it clear,

25 does personalization of ads at all affect your 07:31:49

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1 calculation of unjust enrichment relating to 07:31:53

2 conversion tracking, which is your Scenario 1?

3 A. It does not, no.

4 Q. Okay.

5 Now, earlier today, you testified that 07:31:59

6 advertisers would spend less with Google if they

7 knew Google could not serve ads to sWAA-off users.

8 Do you remember that?

9 A. Yes.

10 Q. Is that because Google would not charge 07:32:12

11 advertisers to serve ads to sWAA-off users?

12 A. Yes.

13 Q. Now, Google's lawyer invited to imagine

14 how advertisers react if Google couldn't serve ads

15 to sWAA-off users. 07:32:26

16 Do you remember that?

17 A. Yes.

18 Q. And he asked you whether advertisers

19 would continue to spend the same amount of money

20 with Google by increasing their ad spend on sWAA-on 07:32:32

21 users.

22 Do you remember that?

23 A. I do, yes.

24 Q. Are you aware of any evidence suggesting

25 that advertisers would increase how much they would 07:32:41

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1 spend for sWAA-on ads in a but-for world? 07:32:44

2 A. No, I am not.

3 Q. Is it fair to say that sWAA-on users

4 don't necessarily get more ads just because Google

5 wants to serve them more ads? 07:32:54

6 MR. SANTACANA: Objection. Vague.

7 THE DEPONENT: That is my understanding,

8 yes.

9 Q. (By Mr. Lee) And is that because sWAA-on

10 users would only see more ads if they visit more 07:33:01

11 apps or spend more time in apps?

12 A. Yes, that is correct.

13 MR. SANTACANA: Incomplete hypothetical.

14 Q. (By Mr. Lee) Did Google conduct any

15 study suggesting advertisers would spend more for 07:33:10

16 sWAA-on ads in a but-for world?

17 A. Not that was produced in this case --

18 Q. Are you aware --

19 A. -- no.

20 Q. -- any of Google's rebuttal experts 07:33:21

21 preparing such a study?

22 A. No, I'm not.

23 Q. As far as you -- as far as you're aware,

24 does any such analysis exist?

25 A. It -- it does not. 07:33:30

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1 Q. Do you remember when, earlier today, 07:33:32
2 Google's lawyer asked you whether you were trying
3 to measure the damage in your unjust enrichment
4 opinion -- you're trying to measure the profits
5 that Google gained thanks to its alleged misleading 07:33:43
6 of those plaintiffs?

7 A. Yes.

8 Q. And do you remember answering that's
9 generally somewhat accurate?

10 A. Yes, I do. 07:33:53

11 Q. So I want to understand what part isn't
12 accurate so that we're all clear. So let me ask
13 you the following: Do your unjust enrichment
14 models measure how much money Google made from
15 making misrepresentations to Plaintiffs, or from 07:34:04
16 collecting WAA- or SWAA-off data without their
17 permission?

18 A. The latter.

19 Q. Is it fair to say the but-for world that
20 your unjust enrichment models contemplate is the 07:34:16
21 impact on Google's profits if it had not collected
22 the WAA- or SWAA-off data that it's collected
23 without permission?

24 A. Yes, it is.

25 Q. Okay. You were asked by Google's lawyer 07:34:26

1 whether you considered what would have happened in 07:34:29
2 a but-for world if a court did not allow GA for
3 Firebase for sWAA-off users at the beginning of the
4 class period.

5 Do you remember that? 07:34:40

6 A. Yes.

7 Q. And you said, "not beyond the scenarios,
8 in your opinion."

9 Do you remember testifying to that?

10 A. I did, yes. 07:34:45

11 Q. All right. I want to talk about
12 Scenario 1.

13 Is the measure of damages in Scenario 1
14 the difference between Google using sWAA-off data
15 for conversion tracking and Google not being able 07:34:55
16 to use that data?

17 A. Yes, it is.

18 Q. Is the latter the but-for world you
19 considered?

20 MR. SANTACANA: Vague. 07:35:05

21 THE DEPONENT: Yes, it is.

22 Q. (By Mr. Lee) Okay. Now, counsel for
23 Google asked what advertisers would have done if
24 Google could not perform a conversion tracking for
25 sWAA-off users. 07:35:22

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1 Do you remember that? 07:35:23

2 A. I do, yes.

3 Q. Now, if advertisers did not have to pay
4 Google for these untracked conversions, do you
5 think they would take any steps to track those 07:35:29
6 conversions just to pay Google more money?

7 A. No, they would not.

8 Q. If Google hired third-party trackers to
9 do the tracking for it in that scenario, do you
10 think that would be appropriate given Google's WAA 07:35:39
11 and sWAA disclosures?

12 MR. SANTACANA: Calls for a legal
13 conclusion. Vague. Compound.

14 THE DEPONENT: I do not.

15 Q. (By Mr. Lee) Do you recall being asked 07:35:49
16 today some questions about the Ipsos study?

17 A. Yes, I do.

18 Q. Now, Google's lawyers suggested that the
19 Ipsos study's terms allowed Google to use the data
20 more broadly than -- than the sWAA-off button. 07:36:02

21 Do you remember that?

22 A. Yes.

23 Q. Did Google Pay Ipsos respondents an
24 up-front fee for agreeing to the terms of the study
25 beyond the \$3 that you isolated for your opinions? 07:36:12

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1 A. Yes, it did. It was \$20. 07:36:14

2 Q. And did you exclude that \$20 up-front fee
3 in your damages calculation?

4 A. I did, yes.

5 MR. LEE: Thank you, Mr. Lasinski. I 07:36:21
6 have no more further questions for now.

7 FURTHER EXAMINATION

8 BY MR. SANTACANA:

9 Q. Mr. Lasinski, you just testified that
10 personalization of ads played no role in your 07:36:30
11 Scenario 1 opinion?

12 A. That is correct, yes.

13 Q. Did personalization of ads play any role
14 in any of your damages calculations?

15 A. No, it did not. 07:36:44

16 Q. Okay. Just making sure.

17 You were just asked the following
18 question: "Do your unjust enrichment models
19 measure money Google earned from misrepresentations
20 or money Google earned from collecting data without 07:37:02
21 users' permission?" [as read]

22 Do you recall that question?

23 A. I do recall that.

24 Q. And you said they measure the latter?

25 A. Correct. 07:37:12

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1 Q. Which is to say, money Google earned from 07:37:13
2 collecting data without users' permission, right?

3 A. Correct.

4 Q. How do you know it was without users'
5 permission? 07:37:23

6 A. Because my starting point for the class
7 is WAA-off/SWAA-off users. So they did not have
8 permission.

9 Q. How do you know that the data Google
10 collected falls within the scope of what the SWAA 07:37:41
11 button says it applies to?

12 A. Because I was informed technically what
13 my scenarios should look like from Mr. Hochman.
14 And so he provided me with the information on how
15 to make my -- make those assumptions. 07:38:08

16 Q. Okay. So just to clear this up, you told
17 me at the start of day that you wouldn't opine on
18 what Google should or shouldn't do.

19 Do you remember that?

20 That's not your role here. 07:38:23

21 A. I don't -- I didn't -- I don't remember
22 my testimony. But what Google or shouldn't do, I
23 don't believe that that's necessarily my role.

24 Q. Nor is it whether Google is liable for
25 anything in particular, right? 07:38:37

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1 A. Yeah, I'm not the liability expert, if 07:38:41
2 that's what you're asking.

3 Q. On that subject, you were just asked
4 something about if Google were to hire
5 third parties to track conversions, would that be 07:38:48
6 appropriate in light of the SWAA and WAA
7 descriptions?

8 MR. LEE: Disclosures.

9 Q. (By Mr. Santacana) Disclosures.
10 Do you recall that question? 07:39:00

11 A. Yes, I do.

12 Q. You answered that question, right?

13 A. I do, yes. I did.

14 Q. Are you now opining on what would or
15 would not be appropriate for Google to do given the 07:39:12
16 way that the SWAA and WAA disclosure are written?

17 MR. LEE: Objection. Form.
18 Mischaracterizes.

19 THE DEPONENT: My -- what I'm -- what I'm
20 testifying here is, I understand that they couldn't 07:39:27
21 collect that information. So just hiring a
22 third party to collect that information doesn't
23 seem appropriate.

24 Q. (By Mr. Santacana) Why?

25 A. Because I don't know that that -- getting 07:39:36

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1 around the actual disclosures in that way to try to 07:39:39
2 serve -- to try to use the information seems
3 appropriate from a legal perspective -- from a
4 common-sense perspective, I should say.

5 Q. Why? 07:39:51

6 A. That's my opinion.

7 Q. But why is -- is it an expert opinion
8 you're offering in this case?

9 A. I was asked the question, so I don't
10 believe that that's -- that is necessarily 07:40:04
11 appropriate to do that.

12 Q. Okay. So you offered an answer to that
13 question that's outside the scope of your expert
14 opinions?

15 A. It's not -- that's not inside my report. 07:40:15

16 Q. That's just your personal opinion?

17 A. That's my personal opinion as an expert,
18 yes.

19 Q. I don't understand what that means.

20 Is it an expert opinion in the case or 07:40:27
21 not?

22 A. Well, I'm not a legal expert, so it's not
23 a legal expert opinion. It's -- I'm the damages
24 person, so that's what it -- it's my opinion.

25 Q. The question you were asked was: "If 07:41:04

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1 Google hired third-party trackers to do the 07:41:06
2 tracking for it in that scenario, do you think that
3 would be appropriate given Google's WAA and sWAA
4 disclosures?"

5 And you answered, "I do not." 07:41:15

6 Is your answer to that question an answer
7 you're providing as an expert in this case or as a
8 person and private citizen who has a lay opinion?

9 MR. LEE: Asked and answered.

10 Go ahead. 07:41:31

11 THE DEPONENT: I mean, it's -- I'm -- I'm
12 not an expert in that area, so it's not an expert
13 opinion.

14 Q. (By Mr. Santacana) It's just your
15 personal belief? 07:41:37

16 A. It's my personal opinion based on my
17 information -- the information available to me in
18 this case.

19 Q. Okay. If Google hired third-party
20 trackers to do the tracking, and those third-party 07:41:45
21 companies could not share any data with Google
22 other than the number of conversions, would that be
23 appropriate?

24 In other words, Google never sees the
25 user data, just gets an accounting from an 07:42:02

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1 accountant. 07:42:04

2 A. I think you're -- you're asking -- you're
3 asking me a question I -- I don't know the answer
4 to that, as I sit here.

5 Q. Well, what more do you need to know to 07:42:14
6 know if it's appropriate?

7 A. Well, you asked me a question whether or
8 not Google hired a third party to collect data that
9 they were told that they could not collect. That
10 doesn't seem appropriate to me. 07:42:28

11 Q. That's the question that Mr. Lee asked
12 you.

13 The question I'm asking you is, what if
14 Google hired a third party to do conversion
15 accounting for it and for its advertisers, and that 07:42:42
16 third party counts up conversions and tells the
17 advertisers how many conversions they have, and
18 Google never sees the data.

19 In your view, is that appropriate in
20 light of the WAA and sWAA disclosure? 07:42:55

21 MR. LEE: Objection. Incomplete
22 hypothetical. Impossible hypothetical.

23 Q. (By Mr. Santacana) Go ahead. Is that
24 appropriate in light of the disclosures?

25 A. I don't know how to answer that. 07:43:07

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1 Q. Well, you had no trouble answering 07:43:08
2 Mr. Lee's hypothetical. Did you and --
3 A. Correct.
4 Q. -- Mr. Lee discuss that hypothetical
5 during the break? 07:43:13
6 A. No.
7 MR. LEE: Mine made sense.
8 Q. (By Mr. Santacana) Okay. Do you think
9 it's an appropriate price in exchange for SWAA-off
10 data to be paid \$3? 07:43:35
11 A. For a class member, yes.
12 Q. And for you?
13 A. If I were a class member, I would accept
14 \$3. I cannot be a class member, but if I were a
15 class member, I would. 07:43:53
16 Q. Did you talk about that question you
17 refused to answer earlier with your lawyer during
18 the break?
19 A. No, I did not.
20 Q. You just decided to answer it now? 07:44:00
21 A. Yes, that is correct.
22 Q. Why did you change your mind?
23 A. Because I -- I thought of if I could say
24 it as if I were a class member, then I would agree.
25 Then I could answer. 07:44:11

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1 But I wasn't -- I wasn't thinking of 07:44:13
2 myself as a class member, because I couldn't be a
3 class member before. Or I can't be a class member
4 now. So I didn't think of that way to answer it.

5 MR. SANTACANA: Okay. I want to take 07:44:24
6 five minutes, and then we'll see where we can end
7 up.

8 THE VIDEOGRAPHER: Off the record. The
9 time is 7:43.

10 (Recess taken.) 07:47:48

11 THE VIDEOGRAPHER: We are back on the
12 record. The time is 7:48.

13 Q. (By Mr. Santacana) Okay. I just have a
14 few more questions for you.

15 So first, keeping with the last thing we 07:48:51
16 were talking about, do you have sWAA turned on our
17 off on your Google accounts?

18 A. I don't know the answer to that.

19 Q. Do you know if you checked it at any
20 point since you were retained for this case? 07:49:07

21 A. I do.

22 Q. You did check it?

23 A. I do know that -- I do know if I checked
24 it.

25 Q. Did you change the setting when you 07:49:13

1 checked it? 07:49:15

2 A. No. I didn't -- I did not check it. I
3 purposely did not check it.

4 Q. I see.

5 A. Once I was retained on this case. 07:49:21

6 Q. Because you wanted to remain independent?

7 A. Because I just thought it would be better
8 off not to mess with any data -- with anything that
9 Google might be collecting.

10 Q. Why? 07:49:35

11 A. Because I'm -- I'm an expert in this
12 case, and so I don't -- I don't want to, like,
13 change any settings or do anything.

14 Q. Does it concern you that Google may be
15 collecting data about you that you did not consent
16 to? 07:49:46

17 MR. LEE: Beyond the scope.

18 Answer if you can.

19 THE DEPONENT: Yes, but I'm not going to
20 change any behaviors because I'm -- as a member of
21 this expert team. 07:49:57

22 Q. (By Mr. Santacana) Okay. Relating to
23 your actual damages opinion, \$3 per device, do you
24 recognize that the opinion, as you've rendered it,
25 could result in class members who had lots and lots 07:50:15

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1 of data transmitted to Google being paid less than 07:50:18
2 class members who had very little data transmitted
3 to Google?

4 A. Yes, I do.

5 Q. That's a possibility in your opinion? 07:50:27

6 A. Yes, it is.

7 Q. Why are you comfortable with that?

8 A. I'm comfortable with that because if you
9 look at market-to-market transaction in the Ipsos
10 study, it does not -- it does not pay users based 07:50:38
11 on the amount of -- the amount of data that they
12 transmit to Google. And that's, I think, the best
13 comparable transaction to -- to use for my actual
14 damages.

15 Q. Is it fair to say, then, that you do not 07:51:03
16 believe actual damages varies depending on the
17 severity of the privacy intrusion on a
18 class-member-by-class-member basis?

19 A. I don't think that that's fair to say. I
20 think that it -- what's fair to say is my 07:51:17
21 calculation is, at the -- at the end of the day,
22 conservative and is the best available calculation
23 based on the information that was available.

24 We talked about this earlier, that
25 there's not information available as it relates to 07:51:33

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1 that in this case. And so it's not something I 07:51:36

2 could have studied.

3 Q. Okay.

4 A. Even -- even if -- even -- even if it's

5 something that I needed to. 07:51:47

6 Q. So leaving your personal beliefs aside, I
7 will ask it differently.

8 Your opinion on actual damages, in fact,
9 does not vary depending on the severity of the
10 privacy intrusion that a class member experienced; 07:52:04
11 is that fair to say?

12 MR. LEE: Objection. Asked and answered.

13 THE DEPONENT: It -- it does not -- it
14 does not vary based on the data, the amount of data
15 that was ill-gotten, as you -- as you had put it 07:52:15
16 earlier.

17 Q. (By Mr. Santacana) And it does not vary
18 based on the nature of the ill-gotten data, right?

19 A. Well, I feel like we're always talking
20 about SWAA data here, so -- 07:52:29

21 MR. LEE: SWAA-off data?

22 THE DEPONENT: SWAA-off data.

23 Q. (By Mr. Santacana) I'll be more
24 specific.

25 A. So there's no variance in my opinion. 07:52:36

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1 Q. It does not vary based on the degree to 07:52:38
2 which the ill-gotten sWAA-off data is more or less
3 private to that person?

4 MR. LEE: Objection. Vague as to
5 "private." 07:52:49

6 THE DEPONENT: It -- I mean, I think -- I
7 think you understand, my -- my calculation does not
8 vary based on -- based on a particular person.
9 It -- it only varies based on the number of devices
10 that someone might have. 07:53:06

11 Q. (By Mr. Santacana) On that subject, why
12 did you decide to make it per device, since people
13 don't usually use, except for me, two devices at
14 once?

15 MR. LEE: I was going to say. 07:53:19

16 THE DEPONENT: I think that -- I think
17 that it's most similar to the Ipsos study, and I
18 think that that -- that that's an appropriate way
19 to consider that.

20 If people -- if people do have multiple 07:53:34
21 devices, and they use them for different things,
22 then they may look at their privacy as it relates
23 to those different devices --

24 Q. (By Mr. Santacana) I see.

25 A. -- on a device-by-device basis. 07:53:47

1 Q. You opined in the Brown case that you 07:53:55
2 referred to earlier that the actual damages in that
3 case was \$3 per device, right?

4 A. In the Brown case?

5 Q. Uh-huh. 07:54:09

6 A. No, I don't think that that's correct.

7 Q. What was your actual damages opinion in
8 that case?

9 A. Can I --

10 Q. Wasn't it based on the Ipsos panel? 07:54:22

11 A. Yes, it was.

12 Q. But the number was not \$3 per device that
13 you arrived at?

14 MR. LEE: You were going to ask me a
15 question -- you were going to say something -- 07:54:34

16 THE DEPONENT: Yeah. I'm worried -- I
17 don't know, like, what I can say or what I can't
18 say.

19 MR. LEE: That's what I thought you were
20 concerned about. So there are protective orders in 07:54:40
21 both cases, and I think we have to be very careful,
22 because I don't want to have Mr. Lasinski
23 inadvertently reveal something that he shouldn't.

24 When you talked about some areas that I
25 thought there was overlap and there wasn't any 07:54:59

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1 confidentiality concerns, I let it go. But I don't 07:55:02
2 know where this is going.
3 But I think Mr. Lasinski seems concerned,
4 so --
5 MR. SANTACANA: Well, you're using my 07:55:13
6 time right now. If you don't have an objection,
7 then I'm going to keep going.
8 MR. LEE: Okay. I might -- I might have
9 him not answer. But -- but keep going, and we'll
10 see. 07:55:21
11 Q. (By Mr. Santacana) Okay. Your opinion
12 in that case was actual damages was \$3 per device
13 per month; is that right?
14 MR. LEE: Go ahead.
15 THE DEPONENT: I don't think so. I don't 07:55:36
16 think that's right.
17 Q. (By Mr. Santacana) What do you think it
18 was?
19 A. I think -- I think, if I remember
20 correctly, it was \$3 per Web extension per month. 07:55:47
21 Q. Okay. Well, it wasn't.
22 A. Okay.
23 Q. But --
24 A. Well, I don't -- I don't remember,
25 obviously. 07:56:08

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1 Q. Sounds like. 07:56:10

2 But you relied on that same Ipsos study
3 to evaluate actual damages in the Brown case,
4 right?

5 A. I did, yes. 07:56:18

6 Q. And the -- the figure that you came up
7 with was \$3, and it was per something?

8 A. Correct.

9 Q. And to your memory, it was not per
10 device; it was per something other than per device? 07:56:28

11 A. I don't really remember, to be honest,
12 what it was.

13 Q. Why in that case did you arrive at \$3 as
14 the amount? Was that a coincidence, or did your
15 calculations in that case mirror your calculations 07:56:41
16 here?

17 MR. LEE: Beyond the scope of redirect.

18 Go ahead and answer.

19 THE DEPONENT: I think -- I think in that
20 case, I believe -- I think in that case, it was -- 07:56:54
21 there's \$3 in the Ipsos study that relates to the
22 Web browser -- to Web browser. And I think that
23 that's what I was using in that case, not -- not
24 device.

25 But I -- to be honest, I don't -- I don't 07:57:13

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1 recall. 07:57:17

2 Q. (By Mr. Santacana) Okay. Then I --
3 thank you for that clarification.

4 What I was asking was just, was the fact
5 that you ended up at \$3 per something, just the 07:57:24
6 fact of the number 3, was it a coincidence that
7 that was 3, and it's 3 in this case? Or is there a
8 reason that they mirror each other?

9 MR. LEE: Beyond the scope of redirect.

10 Go ahead. 07:57:38

11 THE DEPONENT: I don't know that it's
12 actually -- I don't know that it's actually a
13 coincidence. I think if you look at -- it's not a
14 coincidence, because the Ipsos study has \$3 per Web
15 browser, if I remember correctly. And in this 07:57:50
16 case, it has \$3 per device, mobile phone and
17 tablet.

18 So I was looking at different data points
19 within the study, if I remember correctly.

20 The fact that they're paying -- the fact 07:58:02
21 that it ends up being \$3 is because those users are
22 being paid \$3 based on the study.

23 Q. (By Mr. Santacana) I see. Okay.

24 MR. SANTACANA: That is all I have.

25 MR. LEE: Me, as well. 07:58:26

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1 THE VIDEOGRAPHER: Okay. 07:58:27

2 MR. SANTACANA: I will designate
3 "Attorneys' Eyes Only." And you can take your time
4 on the transcript.

5 THE VIDEOGRAPHER: We are off the record 07:58:36
6 at 7:58 p.m., and this concludes today's testimony
7 given by Michael Lasinski.

8 The total number of media used was eight
9 and will be retained by Veritext Legal Solutions.

10 (TIME NOTED: 7:58 P.M.) 07:58:51

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1 I, MICHAEL J. LASINSKI, do hereby declare
2 under penalty of perjury that I have read the
3 foregoing transcript; that I have made any
4 corrections as appear notes; that my testimony as
5 contained herein, as corrected, is true and
6 correct.

7 Executed this ____ day of _____,
8 2020, at _____, _____.

9
10
11
12 _____
MICHAEL J. LASINSKI

1 I, Rebecca L. Romano, a Stenographic Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:


4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath;
8 that a record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; that the foregoing
11 transcript is true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [X] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: July 5, 2023

22
23 
24

Rebecca L. Romano, RPR,
CSR. No 12546

Eduardo Santacana

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July 5, 2023

RE: Rodriguez, et al. v. Google, LLC

6/29/23, MICHAEL J. LASINSKI, JOB NO. 5971107

The above-referenced transcript has been
completed by Veritext Legal Solutions and
review of the transcript is being handled as follows:

___ Per CA State Code (CCP 2025.520 (a)-(e)) - Contact Veritext
to schedule a time to review the original transcript at
a Veritext office.

___ Per CA State Code (CCP 2025.520 (a)-(e)) - Locked .PDF
Transcript - The witness should review the transcript and
make any necessary corrections on the errata pages included
below, notating the page and line number of the corrections.
The witness should then sign and date the errata and penalty
of perjury pages and return the completed pages to all
appearing counsel within the period of time determined at
the deposition or provided by the Code of Civil Procedure.

___ Waiving the CA Code of Civil Procedure per Stipulation of
Counsel - Original transcript to be released for signature
as determined at the deposition.

___ Signature Waived - Reading & Signature was waived at the
time of the deposition.

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1 ___ Federal R&S Requested (FRCP 30(e)(1)(B)) - Locked .PDF
2 Transcript - The witness should review the transcript and
3 make any necessary corrections on the errata pages included
4 below, notating the page and line number of the corrections.
5 The witness should then sign and date the errata and penalty
6 of perjury pages and return the completed pages to all
7 appearing counsel within the period of time determined at
8 the deposition or provided by the Federal Rules.
9 _X_ Federal R&S Not Requested - Reading & Signature was not
10 requested before the completion of the deposition.

1 Rodriguez, et al. v. Google, LLC
2 MICHAEL J. LASINSKI (#5971107)
3 E R R A T A S H E E T
4 PAGE_____ LINE_____ CHANGE_____
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6 REASON_____
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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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